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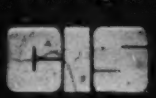

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S. HRG. 100-85

SUNSET OF DOT MERGER AUTHORITY AND AIRLINE SERVICE ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 724

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO ADVANCE THE SCHEDULED TERMINATION DATE OF THE ESSENTIAL AIR SERVICE PROGRAM, AND FOR OTHER PURPOSES

APRIL 23, 1987

Printed for the use of the
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SUNSET OF DOT MERGER AUTHORITY AND AIRLINE SERVICE ISSUES

THURSDAY, APRIL 23, 1987

UNITED STATES SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-628, Dirksen Senate Office Building, Hon. Wendell H. Ford (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Steve Palmer and Harris Livingstain, professional staff members and Patty Hahn, minority professional staff member.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. I want to call this hearing to order on airline consumer complaints and mergers.

In today's hearing the aviation subcommittee is examining the problem of consumer complaints, the question of jurisdiction over airline mergers and the need for labor protection for airline employees involved in mergers. Each of these issues has generated a great deal of attention in the past few months. As such it is our responsibility to address each and every one of them.

In the first three months of this year there were nearly 5,000 complaints made against the airlines, an increase of some 43 percent over the same period last year. More than one-third of these complaints were related to delays and cancelled flights.

Because of the record number of delays, 417,000 in 1986, several bills have been introduced to address this situation. Like most Members of Congress, I am probably one of the most frequent travelers in the country. I have traveled to my home state of Kentucky on the average of 48 times a year for each of the last 12 years.

I have never asked for any special treatment and as a result I have had my share of problems. In spite of this, I am concerned that much of the legislation that is being considered will miss the mark, either because it will not be doing enough to help anyone or it will impose too great a burden on travel agents and the carriers.

There are many causes of these problems. Insufficient numbers of air traffic controllers, delays in the modernization of the air traffic control system, the lack of effective regulatory action by DOT, and the confusion of recent mergers. Regardless of the cause, it is our job to find the means for ensuring that air travelers receive better treatment.

On the matter of mergers, which was the original focus of this hearing, it is no secret that I have not been enamored by the way the Department of Transportation has administered its responsibilities to ensure that mergers will not hinder competition. The recent rash of mergers has encouraged a system of mega-carriers and left a number of small cities with service from only one airline.

Earlier this year, I introduced legislation to accelerate the sunset of DOT's authority to approve mergers and acquisitions. My bill, S. 724, would thus leave the airline industry like all other deregulated industries, under the jurisdiction of the Clayton Act and the Justice Department.

In my view, while this is not a perfect solution it will assure that the competitive concerns, largely ignored by DOT, will receive the attention they deserve. Let me quickly add that this legislation is not designed to affect those mergers currently pending at DOT.

In this light, I expect DOT to continue to process all pending applications as expeditiously as possible, and to review those applications on their own merit. And while it still has jurisdiction over airline mergers, DOT is required to look at the facts presented in each case, apply the standards it believes are appropriate, and to take into consideration all relevant factors, including reviews of the Department of Justice.

Finally, this hearing will address the question of whether airline employees involved in mergers should be eligible for labor protection provisions. Legislation has been introduced by my friend, Senator Adams, to require LPPs to be a requirement for future airline mergers. I look forward to the testimony on this issue.

As you can see, our plate is very full. While I appreciate the input from our witnesses on these issues, I will ask that they make every effort to summarize their testimony this morning leaving ample time for questions and answers.

Senator Hollings, do you have a statement?

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Today, the Aviation Subcommittee will begin to search for answers as to why our nation's air travelers have been forced to endure the frustration brought about by record levels of unannounced delays, cancelled flights, and overbookings.

Each day my office receives letters complaining about the sad state of airline service. In spite of the steady flow of complaints, I am afraid that they represent only the tip of the iceberg. There is no way to measure the number of travelers experiencing similar frustrations who do not complain because of their feeling of shear helplessness. I believe it is time we in Congress respond to their complaints, and I believe the response may be found by embracing a new vision and direction in the way our airline industry should operate.

When Congress passed the Airline Deregulation Act of 1978, the intent was to create a competitive environment controlled by market forces. Lower fares without diminished levels of service was the intended result. While we have seen fares come down on a number of routes, we certainly did not intend for the quality of service to suffer as a consequence. Yet this indeed what has hap-

pened. Proof of this fact lies in the 43% increase in the number of complaints occurring in the first quarter of this year from the same period a year ago. DOT received nearly twice the number of complaints last month than it did in March of 1986.

There is no mystery as to why these complaints have risen so dramatically. In 1986, more than 417,000 flights were delayed in excess of 15 minutes. This comes to an average of 1,114 flights each day. The lack of airport capacity and outdated air traffic control equipment is partly to blame. Legislation to correct this situation has been introduced, and I feel progress will be made in this direction.

However, the airlines are primarily responsible for these delays due to their scheduling practices. On a frequent basis, airlines are scheduling more arrivals and departures than an airport is physically capable of handling. In some instances, we've had a single airline schedule more flights during a particular time period than an entire airport can accommodate. At Chicago's O'Hare, 63 arrivals are scheduled between 9 and 9:30 a.m.; 49 of the 63 are scheduled between 9:15 and 9:30 a.m. There are 36 arrivals scheduled at 9:15 a.m. Similarly, in Denver, 16 flights are scheduled to land precisely at 8:10 a.m. Jimmy Doolittle couldn't have done it.

Thus, it is virtually impossible for every flight to arrive or depart according to stated schedules. The airlines had added to travelers' frustrations by intentionally withholding information regarding delays. With full knowledge of the likelihood that delays are inevitable, airlines refuse to advise their passengers that a flight will probably not arrive or depart as scheduled. In view of the fact that such information is routinely collected by the airlines, this is intentionally misleading and patently fraudulent.

Several of my colleagues have introduced legislation which will force the airlines to disclose more information to the traveler. Armed with such information, an informed decision could be made upon arranging flight plans. Although I applaud these measures, the question becomes whether providing such information will be enough. Our hearing today will focus on this issue, and will additionally concern the transfer of granting merger authority and antitrust matters from DOT to DOJ. In a period in which 95 percent of the market is controlled by less than 10 carriers, the oversight expertise that DOJ can offer makes this proposal attractive. Although consolidation has most likely reached peak levels, market concentration in specific areas must be continually monitored as a threat to competition and a major contributing factor to increases in delays.

[The bill follows:]

100TH CONGRESS
1ST SESSION

S. 724

To amend the Federal Aviation Act of 1958 to advance the scheduled termination date of the Essential Air Service Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 1987

Mr. FORD (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Federal Aviation Act of 1958 to advance the scheduled termination date of the Essential Air Service Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 419 of the Federal Aviation Act of 1958, as amended (the Act) (49 App. U.S.C. 1389), is repealed: *Provided,* That satisfaction of claims or other obligations arising under the provisions of section 419 for services performed prior to the effective date of repeal shall be administered and, as necessary, adjudicated as if the section were not repealed. The table of contents for the Act is amended by striking:

"Sec. 419. Small community air service."

and its subsections.

SEC. 2. Section 416 of the Federal Aviation Act of 1958, as amended (Classification and Exemption of Carriers) (49 App. U.S.C. 1386), is amended by the addition of a sentence at the end of paragraph (b)(4), as follows: "The exemption from section 401 of this title granted by this paragraph shall not apply to any commuter air carrier providing service to any "eligible point" as designated pursuant to section 419 of this Act between October 24, 1978, and October 1, 1987, unless the Secretary determines that such commuter air carrier is fit, willing, and able to perform such service.".

SEC. 3. Subsection (j) of section 401 of the Federal Aviation Act of 1958, as amended (Terminations, Reductions, and Suspensions of Service) (49 App. U.S.C. 1371(j)), is repealed and reserved.

SEC. 4. Paragraph (a)(7) of section 1601 of the Federal Aviation Act of 1958, as amended (49 App. U.S.C. 1551(a)(7)), is revised to read as follows:

"(7) Sections 408 and 409 of this Act (and section 414 of this Act relating to such sections 408 and 409) and the authority of the Secretary under such sections (to the same extent) cease to be in effect on the date of enactment of this paragraph: *Provided,* That rights, duties, and obligations arising (1) in proceedings commenced before the Department of Transportation prior to January 1, 1987, or (2) pursuant

to final orders adopted by the Secretary or the Board under the provisions of sections 408 and 409 (and section 414 relating to such sections 408 and 409) prior to the effective date of termination, shall be administered and, as necessary, adjudicated, as if the sections were not terminated.".

SEC. 5. This Act shall be effective October 1, 1987, except that the amendment made by section 4 shall be effective upon enactment.

Senator FORD. Senator McCain, do you have any statement you would like to make this morning?

Senator MCCAIN. No.

Senator FORD. We are delighted to see you. We have two of our distinguished colleagues here this morning and we look forward to their testimony. Senator Metzenbaum, would you proceed and then we will have Senator Lautenberg follow you.

STATEMENT OF HON. HOWARD D. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. I appreciate the opportunity to appear before your committee and talk about two airline initiatives I have introduced. One concerns airline mergers and related anti-trust aspects. The other relates to probably an even more important consideration, and that is the matter of consumer protection.

As you well know, Mr. Chairman, you have an airline merger bill. I have a bill that has been reported out of the Judiciary Committee that would transfer the jurisdiction over airline-mergers from the Department of Transportation to the Department of Justice. To me it is not a question of which committee has jurisdiction but attempting to resolve the matter.

I think the mergers jurisdiction should be changed to the Justice Department and I have no special pride with respect to whether it is one committee or the other committee that does it.

Senator FORD. The Senator is gracious and accommodating, as he always has been, and I appreciate that.

Senator METZENBAUM. Thank you. When, the 1978 Airline Deregulation Act passed many of us thought that it would enhance competition. We felt that it would make things better in the industry for the American consumers and would be better for the whole free enterprise system. Competitive forces would be given an opportunity to work.

Because the Department of Transportation, however, has allowed merger mania to go unchecked, competition has actually decreased. As a matter of fact, Muse, Frontier, People's Express, Republic, Ozark, Western, Continental, Eastern, New York Air, and PSA have all been acquired by other airlines.

I believe very strongly that this increased concentration is bad for competition and it is bad for the public. Let me give you an example.

The April 15, 1987, Washington Post had a story entitled, "Merger Clips Passengers Wings." The story went on to recite that Steven S. Silver said he thought he was making a good investment in December when he paid $1,987 for a Presidential Airways pass that entitled him to 56 round trips a year to any city served by the airline.

A month later Silver and more than 700 other Presidential passholders learned that the Herndon-based airline dropped its name from many flights and service to six cities as part of the new agreement with Continental Airlines. Furthermore, Continental would not honor the passes.

Mr. Silver stated it very aptly when he said, "in December I felt like I was a beneficiary of airline competition. Now I feel like a victim of less competition because of Continental's growth."

And as recently as this morning on one of the national news shows a woman was interviewed who had said that she thought she needed 175,000 miles on her frequent flyer plan to have a free trip around the world or something. Suddenly she was notified when she was within 5,000 miles of that that she needed 300,000 miles to make the same trip.

What amazed me about the program was the unabashed gall of the man representing the airline who said, well the fact is that we have reduced the rates on some lines and therefore we have a right to make those changes.

To me it goes to the integrity of the airlines who are making changes in midstream. I question their contractual responsibility as well.

But there is more than money involved. Service on the airlines has become disgraceful. Airlines that prided themselves in the past on the quality of their service are now finding that complaints are rampant, that delays are the order of the day, that cancellations are done for economic reasons or other flimsy reasons, that overbooking is a reality day in and day out, and that lost baggage is to be expected.

As a matter of fact one of our colleagues tells a great story, Senator Bumpers to be specific, about lost baggage where he went to the counter of an airline and said, I would like one of my bags to be sent to Honolulu, and one to be sent to Denver, and one to be sent to Chicago, and one to be sent to New York.

The airline person promptly said, Senator we can not do that. He said, the hell you can not. You did it last week with my bags.

Meanwhile, as the service is getting worse, the fares are likely to rise and in all probability will continue to rise. I think two of the airlines have already made an announcement, they expect to have a rate increase shortly. Continental and Eastern just announced a

raise in their most discounted fares and added new advanced purchase conditions.

I believe that it is time for us to act in this area. I believe that, frankly, the whole question of airline safety, which had two major stories in the Washington Post this morning, is a matter of critical concern.

If somebody goes out and murders somebody, they go to prison and do their time. They pay five years or six years or seven years. And then they are back on the streets. If somebody goes out and commits any other kind of heinous crime, no matter how harmful it may be to society, they pay some penalty and then return to society.

Mr. Chairman, I have difficulty in understanding why the PATCO workers, who are so badly needed in the air control towers of this country, have not been given a chance to come back to work.

We need them. Truthfully, they have paid their penalty. They have been out of work since 1981. And I do not think there is anything more shameful than saying that because they did the terrible thing of going on strike that they pay a higher penalty than robbers, kidnappers, bootleggers, and in some instances murderers as well.

I think we need to enforce our anti-trust laws. I think, as I previously stated, we have to move that authority from the Department of Transportation to the Department of Justice, and I have already said Mr. Chairman before you came in, I have a bill. The bill is out of committee.

I am not looking for turf battle with the Commerce Committee. I am happy to work together with you. I think the question is let us move the legislation and let us do it on a separate piece of legislation and do it as promptly as possible. If this committee wants to have it, it is fine with me.

S. 806 was unanimously approved by the Judiciary Committee. It would immediately sunset Transportation's authority over mergers filed before April 1, 1987. It would sunset Transportation's authority to immunize airline agreements as of October 1, 1987.

The Department of Transportation is comfortable with that legislation. If this committee finds that it is comfortable with it and wants to have a bill out of this committee instead of my committee, we are not going to get into a big hassle.

Let me conclude by saying that I have introduced S. 885, the Airline Consumer Rights Act of 1987. It is co-sponsored by Senators Baucus, Simon, Lautenberg, Weicker, Riegle, and Matsunaga. It is endorsed by the Consumer Federation of America.

Under that bill the Secretary of Transportation would be required to issue regulations to prohibit flight cancellations based on economic reasons and to ensure that airlines advertising low-price fares have at least one-third of those seats available at that price.

I believe it is wrong that airlines take full-page ads, telling you how you can buy something for $99 or $79, but when you go to buy the ticket the seats are not available. The airlines, are really engaging in advertising that is totally misrepresenting the facts.

My legislation would also establish a 24-hour toll-free hotline at the Department of Transportation. It would require the airlines to

provide the Department of Transportation with information on the records for the late takeoffs, arrivals, cancellations, re-routings and overbookings. That information would be posted at airports.

I do not want to provide too much of a burden on the airlines, maybe we can say they have to provide information when their delays, cancellations, etc., exceed a certain level.

But I think that we need to let them know that the American people, the public, are entitled to know what the airlines are doing. My bill would require the airlines to tell the passengers the type of plane, the flight's past on-time record, the record for delivering luggage.

S. 885 also would say that when you are buying your ticket on a regular scheduled airline you must be told if the plane does not have toilet facilities, it does not have food, does not have drink, or it is sort of a substandard plane.

I believe my legislation will help travelers make informed choices about where to take their business. I believe that it will help the American economic system by spurring airlines on to engage in free competition and the free enterprise system as it should be.

Mr. Chairman and members of this committee, I want to thank you for giving me the opportunity to be present this morning in making my statement.

Senator FORD. Thank you. Senator Lautenberg?

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman. I appreciate this opportunity to appear before you today and I am pleased to share this panel with my good friend and colleague, Senator Metzenbaum.

I too am seriously concerned about the state of aviation in this country. Over the last several years, as a Member of the Appropriations Committee, I have fought for adequate funding for air safety, for needed improvements to airport facilities, and for an enhanced air traffic control system.

Recent reports show an alarming increase in operational errors by air traffic controllers. In the first quarter of 1987 there were 313 such errors reported, an increase of 18 percent over the same period in 1986. Furthermore, we saw within the last weekend there were three near misses reported.

The air traffic control system is overworked and undermanned. I have pushed for much needed increases in our air traffic control force, and I share Senator Metzenbaum's view, as a matter of fact, our inability to comprehend why it is that this punishment must continue to be sustained because the people who suffer are not the air traffic controllers who struck. They have already paid the price. It is the traveling public that continues to pay the penalty for this stubbornness.

I sought the rehiring of former controllers in order to get the force up to full working level and to provide air travelers with the level of safety they deserve. As Chairman of the Transportation Appropriations subcommittee, I am going to continue those efforts.

But today I want to talk about another aspect of commercial aviation and that is the quality of airline service. Air travel has become an integral way of life for Americans, but now it is becoming a headache.

Service has deteriorated. Unexplained cancellations are frequent. Few who travel have been spared from overbooking, misleading advertising or delay problems.

For example, a recent survey was taken of top executives, that is among those who fly most often. The survey showed that 67 percent of them felt that the level of airline service had declined since deregulation.

Further, their outlook for the future was bleak. Ninety percent of those surveyed felt that things would stay the same or even get worse in the coming year. Frequent flyers have become frequent losers.

Several weeks ago I started a new club. It is a club for those experiencing problems. I call it the Frequent Losers' Club. Members of this club are condemned to all penalties associated with membership, including lost time, lost business, lost baggage, and lost opportunity.

Our club is getting very popular. We use as our symbol a penguin, because everybody knows that penguins do not fly and that is what happens to most of our club members. It is a club with growing popularity. I am actually getting requests from around the country for membership.

Senator Ford: Did 20/20 help you any?

Senator Lautenberg: Well, it helped a little bit. The thing is growing in popularity and we do not restrict it to New Jersey offended people either. It is universally available. I have charter membership cards here with me if any of the subcommittee members have experienced the frequent losers happenings.

There is an important point to remember about this club. There are no dues. The reason that there are no dues is because you have already paid them.

Mr. Chairman, I hope this club will not be around for too long. I hope that we will see the need for it disappearing in the near future. To do that the problems being encountered with airline travel today must be addressed.

That is what this subcommittee hearing is about today and I commend you for holding this hearing. And I look forward to working with you and members of this subcommittee on these important issues.

Deregulation has, in many respects, been a success. Air travel became an affordable means of travel for millions of Americans. Commutation by air became not only possible but practical.

Mr. Chairman, I came to this Senate from the private sector. And I truly believe in the free market. That is what deregulation is all about. But the market is not perfect. It needs to be policed and it has not been. The airlines are taking advantage of the public.

One enemy of competition is lack of information or inaccurate information; deceptive advertising. Competition can be foiled by mergers and other anti-competitive practices. Unfortunately, we find all of these in today's airline industry.

I recently received a letter from Alfred Kahn. As you know, Professor Kahn was chairman of the CAB and the catalyst for deregulation. However, he sees deregulation as having gone awry. I would like to quote from his letter.

He says, "nothing is going to discredit airline deregulation more quickly than the failure of government to fulfill its proper responsibilities. Among others, to enforce the anti-trust and consumer protection laws. In all these respects, the Federal government has failed badly in recent years." End quote.

Professor Kahn has hit the nail on the head. Many of the problems encountered with the airline industry today result from an abrogation of responsibility by the administration. And the fact that airlines are exploiting the failure of the administration.

The Department of Transportation's duties have included oversight over anti-trust and consumer protection. Mr. Chairman, this should not be the case. The DOT should not be in the business of deciding complex anti-trust matters, nor should it be responsible for protecting the American consumer.

It has enough to do overseeing safety and efficiency and to maintain an aviation system, with the capacity to meet the public demand. That is why I sought to provide the Federal Trade Commission with jurisdiction over airline advertising on the floor of the Senate a couple of weeks ago.

Today I am going to be introducing a bill that would do this. It will put the responsibility for policing unfair, deceptive or anti-competitive practices where it belongs—in the Federal Trade Commission.

Yesterday, Senator Hollings chaired a subcommittee, of which I am a member. We questioned FTC Chairman Oliver about airline jurisdiction when he appeared before the appropriations subcommittee.

Though he did not endorse such a transfer of responsibility he stated very clearly that it would be consistent with the mission of the FTC and that the pool of resources available at the FTC would make the job feasible.

I hope the subcommittee will look seriously at this legislation and I hope that you look at what is happening to the average air passenger in this country, and decide that something is wrong. I know that you are going to do that and that something has to be done.

Airline advertising is just one of the problems facing the traveler today. By looking at most ads it is difficult if not impossible to get to the real bottom line. Will I be able to get a seat on the flight I want at the price advertised, or am I just being set up for the old bait and switch?

In many cases it is not even in the fine print. The consumer has a right to information, to know how many seats are truly available at the advertised low fare. What the cancellation policy of an airline is, is equally important. How far in advance must tickets be bought? When can you travel? If the luggage will arrive with the passenger.

On-time performance has also become a major problem. Planes advertised to depart at 8:00 a.m. often do not get off the ground until after 9:00 a.m. I introduced legislation to address this prob-

lem. S. 757 would require airlines to publish on a regular performance the on-time performance of their flights.

It would let consumers know who is sticking to their schedule and who it not. It would help to make the airlines truly competitive and would enable the consumer, the air traveler, to make decisions based on their needs and the expectation of timely departures and arrivals.

That is the market force at work, in my view. Right now the consumers do not know that information. Last weekend the New York Times reported that consumers are up in arms about arbitrary changes in frequent flyer programs. We heard that from Senator Metzenbaum this morning when he pointed out that particular instance.

The rules are being changed in the middle of the game, and that is not right. These are inducements to get people to travel on these airlines and they do it because they expect to be rewarded for it. The FTC is the agency that can best oversee airline advertising and treatment of consumers. The flying public deserves no less.

My bill would require the FTC to take a look at airline practices. It would direct the agency to prevent deceptive advertising by airlines, so that consumers would know what they are really getting, what fare they would really be paying, what their chances are of getting to their destinations on time. It would also protect the rights of frequent flyers and keep airlines from unfairly changing the rules in the middle of the game.

I was pleased to note that Continental Airlines has petitioned Secretary Dole to begin a rule-making for airlines. It would require airlines to report on-time performance, baggage delivery and limitations on advertised fares.

This shows, Mr. Chairman, that things can be done. They ought to be done. But there are still problems ahead. Problems with service. With delays. Cancellations. And problems with employees and employee morale.

Texas Air's plan for integrating People's Express pilots into its system is cause for concern. People's Express pilots are arbitrarily being put at the bottom of the list, and that is not the type of treatment anticipated when the acquisition was approved.

The subcommittee is going to be considering, as you said earlier, Mr. Chairman, labor protection is part of this hearing and I would be very interested in this subject.

In closing I want to say that the airline industry has gone off-course. Consumers are being carried away with it. The airlines have got to be put back on the right course and this hearing should help get us in that direction.

I thank you, Mr. Chairman, and members of the committee for providing me with this opportunity to appear before you this morning.

Senator FORD. Thank you.

You say that you want FTC to promulgate regulations. How will FTC regulations effectively deal with airline advertising policies, given the fact that they must comply with the Magnuson-Moss rulemaking procedures, which could take several years?

Senator LAUTENBERG. Mr. Chairman, without trying to work our way through the structure, we know this: The FTC has a responsi-

bility for protecting the consumer. They are the ones who are aware of and supposedly constantly on the alert for deceptive advertising.

That is what we are talking about here. What is happening to the public is that they are being sold something that is not delivered. And the FTC admitted, reluctantly, that they have the facility to do that; that policing airline advertising, airline service, would be no different than any other job that they're doing.

Originally, the job for monitoring airline services was the CAB's. When this responsibility was sunsetted, it was transferred to DOT. DOT has 15 people doing this kind of service; FTC has over 500 in the consumer protection area.

It fits so naturally that it surprises me, very frankly, that it is where it is. And I think the transfer, given the authority to monitor airline advertising and airline service, I think would be a natural fit, and I don't know how it would be affected by the requirements of Magnuson-Moss, but I'm sure we can work with it.

Senator FORD. Senator Hollings?

Senator HOLLINGS. Thank you, Mr. Chairman. I appreciate particularly, Mr. Chairman, what you and your colleagues are doing here this morning in this important hearing, and the testimony given by Senator Lautenberg.

Senator Lautenberg, you and I know from yesterday's hearings, in which we heard from FTC Chairman Oliver, that he has a rather doctrinaire view. If you make a finding, or if the Congress makes a finding that regulation is proper in this particular area, he would counter that regulation would not be the answer. He looks for the market to operate, namely, your frequent flier.

He says those are business people. They have a lot of money and could bring lawsuits. So even though we would assign that particular consumer problem to his particular trade commission, he would be rather hesitant to act, and I don't know if we would get the required result.

But Mr. Chairman, what is happening should have been foreseen. We cautioned against it when Senator Cannon first brought up deregulation about ten years ago.

Now, this Administration has made irresponsibility an art form. No one is responsible for anything. You can blow up Marines. You can blow up Challenger, the astronauts. Now, the Marines at the Moscow Embassy are too young and single; I guess we're supposed to get old Marines who are married.

With respect to this particular industry, the travelling public is really suffering. Ninety percent of the communities and towns in this country are subsidizing the 10 percent long hauls.

Currently, 95 percent of all air traffic is operated by fewer than 10 carriers. However, our foremost concern is safety.

Last year, the distinguished Chairman and Senator Exon held hearings in Chicago. They found that between 9:00 and 9:30 they had over 63 flights in a half-hour period, between 9:15 and 9:30 they had over 30.

I believe it was 49, and at 9:15, the record indicates that 36 were scheduled to land.

So I think the responsibility is busting out. Some want the Federal Trade Commission to have more authority. Some want the Department of Justice.

Furthermore, it is very amusing to hear Alfred Kahn to say the quickest way for deregulation to lose its credibility is to not have regulation; in other words, hurry up and let's start protecting consumers all over again.

He's come full circle, and I am afraid this committee in some fashion is going to have to come full circle. The reason is that 10 years ago under regulation we had good airline service with good rates. The consumers were protected by the government.

Well, you're looking at Exhibit 1. Since deregulation, my flights have gone up astronomically; five times more, $180 either way to go from Charlotte on up to National. I used to have three direct flights into National, on National Airlines.

Now, I've got none that go direct whatsoever, and I've either got to go to BWI Airport or over to Dulles. I can go 500 miles further to Miami and instead of paying each way $180, it's $90 that is half the cost, and I get there an hour and a half earlier, to Miami.

In spite of all this, I read what the economists in the Wall Street Journal are saying. They say deregulation is working, and that cheaper flights are available. I suppose that holds true from Los Angeles to Las Vegas.

Safety has now become the issue as well as some frequent flyer contracts that airlines continually disregard.

The consumers are being misled, and I think that the government is going to have to come in here and do some re-regulation. There's no question about it.

The reasons are numerous. Concerns about safety, consumer treatment, service mismanagement, cost variances, and numerous other complaints. This is the only committee I know that can handle it in the Congress.

I appreciate your testimony. We've got the jurisdiction of the Federal Trade Commission on this committee. In fact, Senator Ford used to chair that as chairman of our consumer Subcommittee.

This situation has to be handled from a comprehensive aviation perspective, and that responsibility and jurisdiction is right here in this committee.

But I thank you very much.

Thank you, Mr. Chairman.

Senator FORD. Senator Hollings, I would just very briefly say this to you. I agree, that this subcommittee and the Commerce Committee is going in the right direction, and that it does need comprehensive review.

It has become very complicated. Deregulation has worked very well for some, and terribly, as you say, for others.

Senator HOLLINGS. For most.

Senator FORD. I don't know whether you heard an ad this morning that was on television by the Airport Managers Association in which they talk about $5.5 billion sitting idly in the Federal Aviation Trust Fund, not being used or being spent, to improve air service, not being spent for the technology that we need, not being spent for the safety we need, sitting there and perhaps even—I

know this will surprise you, Senator Hollings—maybe even used to disguise the deficit in the budget.

I don't want to shock you, but it may be.

Senator HOLLINGS. No, I agree with you on that. I'm trying to get that money for Dulles and National Airport. We've been needing it out there, but you know, the Department of Transportation said, that would be a breach of trust.

I've been paying 8 percent on my ticket for 20 years. Probably longer since I served with President Kennedy's appointment on the intergovernment relations advisory commission, and prior to that on the Hoover Commission.

So for about 30 years, I've been paying tax on my ticket. Then all of a sudden, to say that to have the airport of the people of America, namely, National and Dulles, improved with those trust funds would be a breach of trust is an outrage.

That's the kind of nonsense we have to hear. Meanwhile the money remains at DOT and we've got to get a commission to issue bonds to pay for the improvements.

The fact that the money is just sitting over there. is an example of the waste that we've got going on. That's the policy.

Senator LAUTENBERG. Well, I would hope that the subcommittee and the committee will consider my bill to transfer the consumer protection phase of it to the FTC. It in no way is intended to interfere or coopt the comprehensive legislation that you're looking at, I assure you.

I want to participate in that in a positive way, but I would hope I could get your cooperation as we turn over the problem to the FTC, so that we can satisfy the consumers' needs as quickly as is humanly possible.

Senator FORD. I might say to my good friend, I'm going to be known as a budget buster shortly, because I am going to ask that we increase the Administration's request for the Airport Improvement Program by 60 percent.

We'll hear some howling, but I think it's revenue neutral when you've got the money there, and 8 percent, you buy a $300 ticket, it's $24, and that $24 is pretty important. If you're not going to spend it, you might as well keep it in your pocket.

Senator Kassebaum?

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. Thank you, Mr. Chairman.

I would just like to say to Senator Lautenberg, I fully appreciate your sincerity and your frustration. I think we all know where you're coming from, and we all come from essentially the same place.

And I don't wish to detain you. Regarding the FTC's role in consumer protection of airline passengers, I think the idea has some merit, but I think it doesn't really go to the heart of some of the problems that we need to address.

This hearing really focuses on two separate issues. I would like to speak for a moment about the Administration's proposal to speed up the transfer of antitrust jurisdiction from DOT to DOJ. I remember when we argued about this in earlier years, when I

chaired the subcommittee. In hindsight, perhaps, it would have been wise to terminate DOT's authority over airline mergers some years back.

I think it is very important to us that we see that this transfer occurs now.

Regarding the problems that have come from constituents and the travelling public, I have two letters that I would like to have made part of the record, because I think they reflect the flavor of the correspondence we all are receiving from passengers who are dissatisfied with airline service.

And I find it really tragic, not only from a safety standpoint, but from a respect for the travelling public, to have those who are missing flights, spending hours in the airport, to be told such things as, well, it's just too bad, and it's unfortunate, and we can't do much about it.

I think something can be done about this. I don't know whether some of the things you mentioned aren't things that the airlines should undertake anyway, for their own competitive benefit.

There are some other suggestions that I would like to also make. One is that the marketplace be used to discourage scheduling an excessive number of flights at peak times. I certainly support the idea of pricing peak time landing and departures at a level higher than those that occur during non-peak times.

This would help us reduce peak period overcrowding, and I think this is the kind of solution that we need to look to. It isn't just a matter of providing knowledge to the public about which airlines are being well run and are timely; it is that some of the travelling public have no options, and for those travelers we have to improve the system itself, it seems to me, to make it more efficient, safe and effective.

I think that we should also consider having air carriers arbitrarily add a designated amount of time to schedule arrival time.

We might well want to mandate such action in cases where flights are routinely late, because this would assist passengers in avoiding missed connections.

Publishing on time performance records, as you have suggested, as have Senator Danforth and Senator Metzenbaum, should also receive serious consideration.

I think that we must also require the airlines, if they will not do so on their own, to assist passengers whose flights are cancelled or delayed.

Those of us who travel frequently know where to go for help. But I have been in airports where I have been racing from one end of the terminal to the other with seconds to spare, trying to catch a flight, and I pass many elderly people who are struggling with luggage, not sure of where to go, and I think this is just quite tragic.

The present situation cannot continue. Either the airlines will have to find a workable solution, or we will here. And that might not bode well for the beneficial effects that we had hoped to achieve with deregulation.

Thank you, Mr. Chairman.

Senator FORD. Thank you very much, Senator Kassebaum. You've always had the ability to look beyond and see things, and

that's one reason you're such a good Senator, and I have a hard spot to fill in taking your place as Chairman of this subcommittee.

Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator McCAIN. Thank you, Mr. Chairman.

I know that we have a number of witnesses waiting, and I would just like to make a few brief comments on what I have just heard. I share the views expressed in somewhat passionate fashion by our witnesses, as well as our distinguished Chairman of the full committee.

I would compare my credentials to those of many in the aviation industry, having been a pilot for some 30 years, and flying back and forth every weekend to a state that does not have a direct flight from Washington, D.C.

And I have suffered the indignities and problems of all us here, and that we will hear about time after time.

I think it's well to review a couple of facts. One, more Americans are able to fly on airplanes since deregulation than ever before in the history of this country; in fact, passenger traffic has almost doubled. Double the number of Americans have been able to fly on airliners.

That, I think, is an important point.

Safety is a concern that all of us have. The reports of near-mid-air collisions continue to go up. We're deeply concerned.

Fact: 1986 was the safest year in aviation history.

Now, I'm sure that consumerites out there will say, well, it was just luck. It may have been, and perhaps tomorrow, there may be a serious midair collision which will be a tragedy that will arouse the sympathy and concern of all of us.

But the fact is, in 1986 more Americans were able to fly on airplanes; more Americans flew safely than any other time in the history of civil aviation.

I think it's well to remember those facts when we consider the other facts like the holdups, the delays, the incredible experience I had on a Continental Airline flight, where we all loaded one airplane, and the other one was loaded, and they made the announcement that we would all switch airplanes.

That was an interesting experience that we had. And it's very anecdotal, the situation that we face.

I do not share the comments of either of my colleagues from Ohio or New Jersey about the air controllers. The air controllers violated the law. The President fired them. And that was supported by the overwhelming majority of the American people.

And on several occasions, there have been attempts to pass legislation through this Congress to rehire them; each time, such legislation has been rejected by the Congress.

And so the comparison between them and the people who serve time in prison I think is a bit overdrawn; in fact, I don't know of any of them that went to jail. They simply violated the law of the land, as it existed, and they were relieved of their duties.

Should we hire more air controllers? Absolutely, and we should train them better. I share the Chairman's view about the dramatic

need for increases in facilities and taking advantage of present day technology in order to improve our air traffic control system.

Finally, I would just like to comment that I was a little surprised to hear the Chairman's comments about airfare prices. Because every place that I have gone, there has been a decrease in air fares.

You can now fly from Phoenix, Arizona, to San Diego for $25. There are a number of cases where airfares have increased, and there are a number of cases where there is nonexistent air service where there was in the past, and indeed the market has acted there.

But overall, the price of flying has decreased dramatically, and that is indicated by the number of Americans who have flown on airliners, and I don't think there is any doubt about that.

I support strongly Senator Lautenberg's proposals, as well as those of Senator Metzenbaum. I also think we should calculate what the cost will be, and how much of that will be passed on to the consumer, to cover the costs of whatever disclosures are required.

I don't say that they're bad, but I know who is going to pay for them, and that's the airline passenger, because that's who pays whenever costs in any company or corporation goes up.

And I appreciate very much your attention, and I look forward to the next panel of witnesses.

Thank you, Mr. Chairman.

Senator FORD. I might say to my good friend from Arizona that you ought to come down and live in my area. We have fewer flights and higher prices. And maybe you're fortunate out there where Las Vegas may subsidize charter flights.

Senator MCCAIN. My point was, Mr. Chairman, that overall costs to airline passengers have dramatically decreased throughout the country.

Senator FORD. In pockets. Sure, I buy a ticket here in Washington and try to go to Louisville, and it's cheaper to go from Washington to Denver and return than to take an airplane that lands in Louisville.

So instead of buying a ticket to Louisville, I bought a ticket to Denver and got off in Louisville. So you know, it works.

Senator Adams.

OPENING STATEMENT BY SENATOR ADAMS

Senator ADAMS. Mr. Chairman, I want to echo your comments exactly. And Senator Lautenberg, I appreciate your contribution.

I just want to say as one who was Secretary of Transportation when deregulation started, they never followed what the Congress mandated. I introduced a bill, for example, you mentioned labor protection provisions.

One of the parts of the original Deregulation Act was to assist in this transition period. They never issued the regulations in the Department of Labor. They withdrew the ones that had already been started.

I agree with you that it is part of what has got to be a comprehensive look at the entire aviation industry, and what has happened since deregulation.

I hope, Mr. Chairman, to have an opportunity to press for that, to put back in simply what was the fair tradeoff in 1978. One half of the bargain went through; the other half was dropped.

And I agree with the Chairman when he says to the Honorable Senator from Arizona that there must be a much different situation there, because I certainly find that we've done the old long-haul short-haul. That all of us who have been in transportation for years always tried through governmental means to avoid. Which is, you can go farther for less than you can go the shorter distance.

I can go to Seattle for just about the cost that I go to Boston, or Hartford. I can also tell you that once I get within the State, it costs me more to fly to the smaller cities than it does to go clear to Los Angeles.

The effect of this has been to turn the subsidy upside down. Everyone was complaining about the fact that the long-haul passenger was subsidizing the shorter-hauls to make an overall system.

Well, they were subsidizing because they were their feeder system. Now we're got the worst of all worlds. The shorter-haul people are subsidizing the long-haul, which are basically business people.

One final thing, Mr. Chairman, that I hope we will look at, and I support very much, is that I don't know whether the FTC is the right place. I think the Congress is going to have to mandate precisely what they want done.

I don't think you can go to regulatory agencies any more, at least, not in the present climate. I think you have to say exactly what you want.

One of the aspects that directly affects consumers, and I think is very concerning to everyone, is that we always knew that the value of an empty seat is zero. Therefore, everybody fills it with every kind of a deal imaginable.

So, the Chairman and I can be sitting there paying $490 round trip to go to the coast, and sitting next to us and all around us are a whole series of people who are paying anywhere from $99 to $175.

Now, I don't mind that they have a bargain fare system. We used to handle that with charters. You remember, if you wanted to pay a cheaper fare, you went in a cheaper class operation.

However today, there is no handling of consumers where everybody kind of gets thrown in the same pot. And when they're thrown in the same pot, people are bumped that are time conscious, and others that aren't time conscious are not bumped.

Therefore, I think the committee has to do it, and I think the two Senators testifying here have made a great contribution.

And I thank you, Mr. Chairman. I don't sit on this subcommittee for the obvious reason that I don't want to be in the details of it, but I sure do want to help when you get there.

Senator FORD. Senator Kasten.

Senator KASTEN. Thank you very much. I think this hearing is an appropriate one and I want to congradulate Senator Lautenberg. I am happy to work with you on these transportation issues.

Mr. Chairman, I don't have a question for the Senator from New Jersey, and if he would like——

Senator FORD. Before you leave, Senator Exon, do you have anything?

OPENING STATEMENT BY SENATOR EXON

Senator EXON. Yes, I do.

Senator FORD. I think you got a lot of statements here this morning, very few questions.

Senator LAUTENBERG. I find it very informative.

Senator EXON. Senator Lautenberg, I want to thank you for introducing your legislation. I am going to take a very hard look at it. I don't know whether it is the answer or not, but at least you are proposing something positive and in the right direction.

The Chairman says statements are made here. I have sat through hearings of this nature as much as anyone on this subcommittee over the years, and I simply want to say that you are striking a nerve cord with your proposal, and you are citing what I hear from people up and down the line.

I don't think there is anything wrong with deregulation. I think deregulation overall has been a good thing for most of the people. It has not been mentioned here this morning, though, something that may not be particularly important to New Jersey but it is elsewhere, and that is the Essential Air Service subsidies that were put in place to handle some of the difficulties when deregulation was first introduced.

I don't think it should be too surprising that we have got total breakdowns in the system, because we anticipated that to some degree. Now we are trying to back out, including the government is trying to back out, on basically some of the essential air service subsidies that were required to take care of the have nots. When I speak of the have nots I am talking about the places where you do not have mass movements of passengers from one large population area to another large population area.

I think deregulation by and large has been good. If there has been a failure, it's been a failure of the enforcement agencies to do what has been necessary on essential air service and other programs designed to make this a fair, total transportation system.

The bottom line on all of this is that the airline industry in its zeal for competition has gone absolutely hog wild, and I think that the abuses that the traveling public has been subjected to are something that this subcommittee should do something about rather than saying, oh, we are in a deregulated area, so let the free enterprise system work.

The free enterprise system was not designed to have baggage lost a third of the time. The free enterprise system was not designed to have airlines overbooking flights. The free enterprise system was not designed, as some of the airlines out there are doing today, to advertize cheap fares in certain areas, or overschedule flights that they really don't ever intend to make unless they can fill them up.

I simply say that if there is a problem with deregulation, the problem has been the free enterprise system too much at work. They are almost emasculating the responsibility that the airlines have to the traveling public. I do not want, nor do I advocate regulation or reregulation of the airline industry. On the other hand, I

think if we are going to continue down this road of allowing the airlines to go out there and fight this thing out and by letting them merge, or reschedule, delay flights, change fares capriciously, then something is wrong.

I think that we are overlooking two factors. Number one, the airline industry is not the free enterprise system as we generally know it. They use airport facilities that they make contributions to but not totally pay for.

The other thing, for which I think there has been a total breakdown, is the matter of safety. I think the airline industry in their zeal for profits had better start understanding that they have a responsibility to seriously consider safety. We've got too many airplanes flying in too many places at the present time with the system we have.

The fact that we had a relatively good safety record last year should be a warning to all of us that it was a happenstance. If you would have sat in the hearings that I have and listen to the concerns that I have, then the concerns I have expressed would appear very genuine. Last month we had testimony in front of this subcommittee that high officials in government said that they don't feel as safe flying to O'Hare Airport as they did two or three years ago.

I am glad we finally got some of them to admit that because I don't think there is any question about it. The safety margin has been diminishing directly proportionate to the number of airplanes that are flying, and there are too many under the present system, certainly at certain peak hours.

I think we have a responsibility to correct this, and I want to congratulate you, Senator, for at least attacking a part of this problem, I think the people of America expect us to do something about it rather than leaving it up to the free enterprise system.

Senator LAUTENBERG. Thank you.

Senator FORD. Thank you, Senator. We apologize to you in some respects, but not in others.

Senator LAUTENBERG. That will teach me to leave the subcommittee.

Senator FORD. That's right. Senator Kasten has a statement he would like to make, and I will recognize him at this time.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, I just want to say that I share the anger and the frustration that is clearly evident both at that side of the witness table and among the members, and I look forward to working with you on legislation. I look forward to working with the Senator from New Jersey in the Appropriations Committee because it is clear that the Congress will act. Whether it is going to be the Airline Safety and Improvement Act of 1987 by Senator Danforth, or Senator Lautenberg's legislation, or legislation from Senator Metzenbaum, I predict the Congress this year will pass some kind of airline passengers rights legislation.

We are simply going to respond to the pressure which is coming from outside the Beltway, inside the Beltway, by people all over, large states, small states, whether it is Green Bay, Milwakee, or

Phoenix, or Kansas, or whatever. We are going to respond. The first step is going to be a little bit of what we are seeing here today which is in effect airline bashing coming from a lot of different Congressmen and Senators.

This is going to go on and it has been going on. The next step is going to be legislation, and I am hopeful that we are going to be able to work with the airline companies in a way that the legislation that we pass will in fact work. We hope we can work with them rather than have them come in kicking and screaming, resisting all the different kinds of efforts that will be proposed.

You don't have to be a genus to figure out that there are significant problems at airports all across the country. I am hopeful that the airline representatives that are here today are not going to simply say "we don't have any problems."

We are going to have legislation, and I believe that legislation is going to pass quickly. That legislation is going to be either in the form of a reauthorizaion bill, or a new bill coming out of this committee, or as an amendment attached onto legislation which will be developed in the Transportation Committee.

We've got a problem. We are going to act. The question is what is the industry going to do? I am hopeful that we can work together and I look forward to doing that. Thank you, Mr. Chairman.

Senator FORD. Thank you, Senator Kasten. We will now have a panel consisting of Mr. Robert Crandall, Chairman and Chief Executive Officer of American Airlines; the Honorable Matthew V. Scocazza, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation; Thomas C. Plaskett, President of Continental Airlines; and Murph Dullum, Vice-President of Government Affairs, Delta Airlines. If you gentlemen would come forward, Mr. Crandall, we will hear from you and go forward. We will ask each of the participants on the panel to make their statement and then the Senators will have an opportunity to ask questions.

STATEMENTS OF ROBERT CRANDALL, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AMERICAN AIRLINES, INC.; MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; THOMAS G. PLASKETT, PRESIDENT, CONTINENTAL AIRLINES CORP.; AND MURPH DULLUM, VICE PRESIDENT, GOVERNMENT AFFAIRS, DELTA AIRLINES

Mr. CRANDALL. Thank you, Mr. Chairman. I am very glad to have a chance to appear before you today. Although you have decided to consider a number of issues, I plan to limit my remarks to those which are associated with the quality of airline service, things like flight delays, consumer notice requirements, and the increasingly apparent impact of labor cost disparities on airline service standards.

The causes of flight delays are very complex and the search for solutions has given rise to a certain amount of finger-pointing. The airlines have complained loudly about the inadequacies of the air traffic control system while the Department of Transporation feels that airline scheduling practices are at fault. In fact, both views are valid.

Airline scheduling practices are, without question, a part of the overall delay problem and anyone who says otherwise looses credibility. It is important to recognize, however, that in a deregulated, market driven, highly competitive business there are some limits on how much voluntary action individual carriers can take in pursuit of overall industry dependability.

In the year since deregulation hubs have placed new demands on the air traffic control system. Those new demands reflected by schedule peaks and by the natural delays which are driven by the hub and spoke approach have been the focus of a great deal of attention in recent weeks.

First of all, I am pleased to tell you that American has agreed to substantially restructure both its Dallas/Fort Worth and its Chicago hubs. We have made more than a thousand schedule adjustments at those airports. We have added a total of more than 33 hours a day of flying time to our schedules with the purpose of improving dependability.

We should not pretend that voluntary schedule adjustments will solve the delay problem. They are short-term fixes at best. In the long term, given the certainty of an ever growing industry, we need both, some sort of capacity allocation method. Perhaps something like the slot approach which is now in use at various airports. To minimize the needs for such methods we need the very best possible air traffic control system available, a system which is designed to accommodate growth rather than to inhibit.

Now various ways of achieving that result will no doubt be hotly debated in the weeks ahead. The important thing is that we must make available the resources which are needed to create the best possible system.

A major part of the problem we have today is attributable to the government's failure to spend the money that our passengers are paying for first rate air traffic control system. We have simply got to find a better way, or alternatively, accept the reality of an increasingly crippled system.

Let me now turn to some of the broader questions involving quality of service that you have been discussing. The public perception that all airline service, to use the vernacular, has gone to hell is unfortunate because there are some very significant differences in the service offered by various airlines.

Unfortunately, the public has almost perfect price perception but almost zero quality perception. That is understandable since anyone can find out the price of a seat on any of the world's airlines with a single call either to a travel agent or to an airline.

On the other hand, neither we or travel agents, nor the public have access to any hard data concerning the schedule dependability and the service levels of individual carriers. As a result, the public simply has no way of balancing its price and quality alternatives.

Over a month ago, on March 13th, I wrote to members of Congress, including each member of this subcommittee, urging that airlines be required to file comprehensive reports concerning on time schedule performance in all major markets. I also urged that reports be required on a consistent and a verifiable basis concerning lost or misdirected baggage, the average time required to deliv-

er passenger baggage, seat spacing, the frequency of denied boarding incidents, and the circumstances in which accommodations are provided to misconnected passengers.

Requiring those reports will give us the ability to offer consumers a valuable new resource, literally a data bank on the quality of airline service.

This week Continental Airlines filed a petition supporting certain elements of that proposal. We applaud Continental's decision to add its voice to the cause, although the data bank that I would like to see goes well beyond the reporting requirements in their petition.

Now once that data becomes available I anticipate it will be widely publicized in the media, and as a major computer reservation system vendor, American has already expressed its willingness to create appropriate displays to enable consumers to be able to make quality of service comparisons between airlines.

In looking for solutions to the problem of declining airline service, I believe that Congress has given relatively little attention to its causes. Too often the phenomenon is passed off as necessary by-product of the vigorous price competition that has resulted from deregulation.

Now if all airlines had similar cost structures, and if quality information were readily available in the marketplace, then price competition would interact with quality competition in much more realistic ways.

Because quality information is not available, and because there are enormous labor cost disparities between carriers, that interaction is largely lacking today.

Those labor cost disparities date back to the time when Continental Airlines used the bankruptcy laws to terminate its labor contracts, thereby cutting its labor costs roughly in half.

As a consequence of that action, American's labor costs continue to exceed those of Continental by about 50 percent. To achieve cost parity we would have to impose wage and benefit reductions of more than $600 million a year on our employees. In that regard I might say that American is not unique. Several major airlines are faced with exactly the same labor cost disparities.

Ladies and gentlemen, responsible airline managers are going to find some way to close that labor cost gap, because in today's price conscious environment they must do so if they are going to stay in business. As they seek ways to shave their labor costs, there are going to inevitably be more of the traumatic labor management confrontations which have had a major impact on the industry's overall quality of service.

Some of the issues that should be studied and some of the questions that soon must be answered, in my view, are set forth in Attachment A to my written testimony. They affect service, they affect airline employees, and they will ultimately affect the competitive balance in the industry. I strongly recommend that the committee consider them at the earliest opportunity, and I also recommend that an airline employee bill of rights accompany the passenger bill of rights that we are discussing here today.

That concludes my remarks, Mr. Chairman. I thank you for the chance to be here, and I will welcome the opportunity to respond to your questions.

[The statement follows:]

STATEMENT OF ROBERT L. CRANDALL, CHAIRMAN AND PRESIDENT, AMERICAN AIRLINES, INC.

My name is Robert L. Crandall, and I am Chairman and President of American Airlines. I appreciate the opportunity to appear before the Committee today. Although a number of issues are to be considered in this hearing, I plan to limit my testimony to those issues associated with the quality of airlines service—flight delays, consumer notice requirements, airline advertising practices and the increasingly apparent impact of labor cost disparities on airline service standards.

1. FLIGHT DELAYS

There can be no question that flight delays have become a serious problem for the air transportation industry. The causes of these delays are complex and, unfortunately, have given rise to a certain amount of finger pointing. The airlines have complained loudly about the inadequacies of the air traffic control system, while the position of the Department of Transportation has been that airline scheduling practices are at fault. Members of Congress are now beginning to consider various legislative solutions. Thus it seems timely to pinpoint the causes of delays so that whatever solutions are decided upon are both practicable and effective.

We must recognize that the public demand for air transportation services can be expected to increase every year. Industry traffic rose 8.5% in 1986, and will increase by 8% to 10% in 1987. We cannot build new airports because of envrionmental constraints, and our ability to construct new runways at existing airports is severely restricted for the same reason. Given these constraints, we have but two courses of action available to us. One is to ration airport/airways capacity in some way; the other is to buy whatever hardware is required, hire whatever controllers are required and operate the very best air traffic control system possible. In my view we must pursue both courses; a failure in one area will increase the pressure on the other.

(a) *Airline Schedules.* Airline scheduling practices are, without question, a part of the overall delay problem. Anyone who says otherwise loses credibility. It is important to recognize, however, that in a non-regulated market-driven business there are severe limits on how much improvement can be expected from voluntary changes. As growth occurs, voluntary action by individual carriers to achieve industry dependability goals will become even more difficult. Those who attribute delays to competitive scheduling practices must, it seems to me, recognize that placing the blame there is a repudiation of existing marketplace solutions and in a spirit of realism recognize that if the problem is schedule based, we must have either alternative market solutions (such as slots) or some form of schedule regulation.

In the years following deregulation, most airlines restructured their route systems so as to maximize opportunities to combine traffic flows and thus optimize the use of their assets. By so doing, they created hubs, with banks of flights arriving and departing in schedule complexes that facilitate the interchange of traffic. There are now 26 hubs—some major and some minor—in the United States. Hubs offer the public a wide variety of travel routings, but at the same time, give rise to the interdependency of many flights, thereby making the airline system inherently less reliable. Hubs also create new demands on the air traffic control system in the form of schedule peaks. It is these peaks that have been the focus of attention in recent weeks during industry discussions of possible schedule adjustments.

For its part, American has agreed to substantially restructure both its DFW and Chicago hubs, making more than 1,000 schedule adjustments at those airports. We have also added a total of 33 hours per day of flying time to our schedules to improve dependability. Our decision to make these adjustments involved a rather delicate balancing of interest—we are consciously offering less-than-optimum schedules at these hubs in order to enhance depandability. We anticipate that consumers will perceive an improvement in our on-time performance as outweighing the compromises to schedule convenience. Only time will tell whether data will be available by which we will be able to demonstrate to our customers the wisdom of our actions.

(b) *Capacity of the Air Traffic Control System.* We should not pretend that voluntary schedule adjustments will solve the delay problem. They are short-term fixes at best, and history tells us that the beneficial effects of such adjustments will be

eroded over time. In the long term, we must have the most efficient possible air traffic control system—one that is designed to accommodate the inevitable growth of air traffic rather than inhibit it. The industry has come forward with a proposal to create a new independent public authority to manage and develop the air traffic control system. This proposal has not yet generated much support either in the Administration or the Congress, and it is yet to be seen whether it has any future at all.

The proposal to create a new authority is not an inflexible one. Indeed, if there are other and better ways to insure that all the money needed to optimize the ATC will be raised and spent, we are prepared to embrace them. The important thing is that we must take some new approach to the funding problem so that the system will get the resources that it needs. We have seen how the unpredictable cycles of the Federal budgetary process have precluded, in the past, effectively spending the money that our passengers are paying for a first rate air traffic control system. We simply must find a better way.

I should also add that by urging these changes, we do not mean to reflect on the abilities or dedication of the people now charged with operation of the air traffic control system. To the contrary, we believe that the Department of Transportation and Federal Aviation Administration have done about as well as can be expected with the resources that have been made available to them. We do not preceive the inadequacies of the air traffic control system as resulting from a "people problem," but rather from a structural deficiency that prevents even the most dedicated people from giving us the best possible system.

2. CONSUMER NOTICE REQUIREMENTS

The public preception that airline service has "gone to hell" is unfortunate because there are significant differences in the service levels and practices of the various airlines. The public seems to have perfect price perception but less-than-perfect quality perception. This is understandable since anyone can find out the price of a seat on any of the world's airlines with a single call to either a travel agency or an airline. On the other hand, neither we, travel agents nor the public has access to any hard data concerning the schedule dependability and service levels of individual carriers and, as a result, the public has no way, today, of balancing price and quality alternatives.

Over a month ago, on March 13, I wrote to members of Congress, including each member of this Subcommittee, urging that airlines be required to file full reports concerning on-time schedule performance in each of the 200+ city pairs with the heaviest airline traffic. I also urged that reports be required, on a consistent and verifiable basis, concerning lost or misdirected baggage, average elapsed time between aircraft arrival and baggage delivery by station, seat spacing, the frequency of denied boarding incidents, and the circumstances in which accommodations are provided to misconnected passengers. The purpose of these reports would be give the consumer a unique and valuable new resource—a data bank on the quality of airline service.

Earlier in the week, Continental filed a petition for rulemaking suggesting reports concerning certain parameters of airline service. We applaud Continental's decision to add its voice to the cause, although the kind of data bank that I would like to see goes well beyond the reporting requirements suggested in that petition.

Although I understand that the Paperwork Reduction Act would require the approval of the Office of Management and Budget of any new reporting requirement proposed by the Department of Transportation, it is difficult for me to believe that anyone at OMB would want to deny the marketplace the kind of information it needs to function effectively.

Once the data is available. I anticipate that it will be widely publicized in the media. As a major computer reservations system vendor, American has already expressed its willingness to create appropriate displays in SABRE to enable consumers to make quality of service comparisons between airlines. These displays would be akin to our Shopper's Fare Guide, a popular SABRE feature that sets forth all fares offered in a given market.

There is no question in my mind that if quality of service data is made readily available, consumers will use it and you will see an across-the-board improvement in airline service levels.

3. AIRLINE ADVERTISING PRACTICES

Most airlines follow the practice of limiting the number of discount seats that are made available on given flights. Obviously, flights in the peak travel periods—those

for which demand is strong—will have relatively fewer discount seats in the inventory that those in the off-peak hours. We must remember that there are still a lot of passengers who wish to book a full-fare seat on short notice, and airlines must take that factor into account in their booking practices. At the same time, we must take steps to insure that the consumer is not misled or unfairly made the target of "bait and switch" tactics.

We must also be practical. Since American operates over 1,500 flights per day and accepts reservations almost a year into the future, any requirement that we identify the number of discount seats available on each flight would give rise to very formidable problems. I believe that we can achieve our disclosure objective if, when advertising discount fares, we tell consumers the percent of total seats that are offered at these fares on a system-wide basis.

Most airlines have also adopted "no refund" policies with respect to their lowest fares. So long as the consumer is given adequate notice of this policy, I do not believe there is any issue of unfairness. No-shows cost airlines substantial amounts of money, and it is only by passing this risk on to the consumer that today's very low discount fares can be justified.

4. IMPACT OF LABOR COST DISPARITIES ON AIRLINE SERVICE

Everyone seems to agree that—at least on an industry basis—the quality of airline service has declined precipitously in the last year or so. In looking for solutions to the problem, Congress has given relatively little attention to the causes of the decline. Too often, this phenomenon is passed off as a necessary by-product of deregulation. While there is clearly an element of truth in this conclusion, many of the service problems that you are seeing today are the result not of deregulation per se but of the substantial labor cost disparities that have developed in the industry for reasons not directly linked to deregulation.

(a) *Price Competition.* To many people, price competition is what deregulation is all about—to many, it is the only thing of any importance. They will point out that in the aftermath of airline deregulation in 1978, competition has forced down the price of air travel to the point where it is afordable by millions of Americans who might otherwise have been foreclosed from the "luxury" of flying. I do not quarrel with this assessment, but must point out that as price competition escalates, service will deteriorate unless consumers have access to information with which to balance price and quality offerings. Moreover, to some extent lower prices lead to overall declines in service levels because they increase load factors, and crowded airplanes and airports mean poorer service.

(b) *Labor Cost Differentials.* If all airlines had similar cost structures, and if quality information were readily available, price competition would interact with quality competition in more realistc ways. However, because quality information is not available, and because there are enormous labor cost disparities between carriers, that interaction is largely lacking today.

Some years ago Continental Airlines used the bankruptcy laws to terminate its labor contracts, thereby cutting its labor costs (salaries and benefits) roughly in half. Subsequently, that airline has emerged as the industry's most aggressive price competitor. The Texas Air network now includes Continental, Eastern, New York Air, People Express and Frontier—all of which pursue a similar approach to both labor costs and ticket prices.

Variations in labor costs are not unusual in any industry. What is unusual in the air transportation industry is the magnitude of these differences. In 1986, American's unit operating costs exclusive of wages, salaries and benefits closely approximated those of Continental. However, in the wages, salaries and benefits category, American's unit operating costs exceeded those of Continental by more than 50%. American would have to impose wage and benefit reductions of more than $600 million per year in order to achieve labor cost parity with Continental. In this regard, American is not unique. Several major airlines are faced with labor cost disparties of a similar magnitude.

In my view, the members of this committee might well ponder the long term implications of these labor cost disparities. Responsible airline managers are going to find some way to close the labor cost gap because—in today's price conscious environment—they must offer the same low fares as Continental if they are to stay in business. As they seek ways to shave their labor costs, there will inevitably be some traumatic labor-management confrontations which can only have further adverse impacts on the industry's overall quality of service.

This reality is being demonstrated right now at Eastern. Eastern's employees have been presented with a demand that they submit to labor cost reductions of

$490 million per year. They have been told that if they do not accede to these demands, they will face layoffs as their aircraft are reassigned to other carriers in the Texas Air system. Indeed, five of Eastern's aircraft have already been so reassigned. The consequences of these actions are reflected in consumer complaint data published by the Department of Transportation.

Retiree medical benefits are one very telling illustration of the growing cost disparity problem. These benefits cost American about $16 million in 1986. A statistical analysis tells us that by the year 1996, the cost of providing medical benefits to our retirees will be approximately $105 million per year. Some airlines, including Continental, provide no medical coverage whatsoever for retirees. In the next few years, that disparity is going to have to be rectified one way or another.

Some of the issues that should be studied—and some of the questions that soon must be answered—are set forth in Attachment A. They affect service; they affect airline employees; and they will ultimately affect the competitive balance in the industry. Although some of these issues go beyond the scope of today's hearing, I strongly recommend that the Committee consider them at the earliest opportunity.

[Attachment A]

IMPLICATIONS OF LABOR COST DISPARITIES IN THE AIR TRANSPORTATION INDUSTRY

1. There are substantial disparities in the employee wage and benefit costs of the major U.S. airlines.

(a) What are the most significant disparities, and what has given rise to them?

(b) What is the impact, if any, of such disparities on the overall level of service provided by airlines to their customers?

(c) What are the long-term implications for competition in the air transportation industry if they persist?

(d) What are the long-term implications for employees at higher cost carriers?

2. A form of "double-breasting" has developed in the industry as a result of union and non-union airlines coming under common control.

(a) What are the implication for employees if assets of the union airline can be redeployed to the non-union airline?

(b) If this form of "double-breasting" threatens to exacerbate the current industry disparities in employee wage and benefit costs, what strategies can the higher cost airlines be expected to employ to achieve labor cost parity?

(c) What are the implications of these strategies on airline service levels, and what will be the impact on airline employees?

(d) What changes in the policies of the National mediation Board or in the language of the Railway Labor Act are appropriate to deal with the "double breasting" issue?

3. Company-paid retiree medical benefits appear particularly vulnerable in the air transportation industry.

(a) The cost of these benefits will escalate more rapidly than that of other types of benefits because the ratio of retirees to active employees will increase significantly in the next decade.

(b) The Financial Accounting Standards Board is weighing a proposal that would require companies to reflect these obligations on their balance sheets, a proposal that would have an enormous impact on both airline earnings and balance sheets.

(c) Unless all major airlines soon provide company-paid retiree medical benefits, those airlines now providing them may have no alternative but to withdraw them as a means of remaining cost competitive.

(d) What are the public policy implications of a major industry withdrawing company-paid retiree medical benefits?

(e) Is it preferable for the Congress to stand aside and allow airlines to withdraw these benefits or, alternatively, to require all airlines to provide an appropriate level of such benefits as a matter of public policy.

Senator FORD. You will get that opportunity, Mr. President. Matt, do you want to go ahead?

Mr. SCOCOZZA. Thank you, Mr. Chairman. As I begin, I think it is vital to acknowledge at the outset that 1986 was a watershed year for the U.S. aviation industry. The structure of the sector changed dramatically. A lot of stress and strain resulted. Certainly the carriers could have handled many of the resultant problems better,

and should have anticipated the advent of these problems more astutely.

In this regard, consumer complaints coming to the Department of Transportation have risen dramatically over the past year. However, caution must be exercised when interpreting the Department's complaint numbers as most complaints are made directly to the airlines rather than to DOT. Therefore, DOT's complaint records are not necessarily representative of the true pattern of consumer problems.

One thing is very clear. A vast majority of complaints focus on airline delays. I will concentrate on why delays occur and how the Department is responding to the problem.

At the 22 busiest airports there were 367,000 delays recorded by the FAA in 1986, compared to 295,000 during 1985, a 25 percent increase. While an estimated 65 to 70 percent of these delays were weather related, we investigated and found clear-cut evidence that at many airports the airlines were scheduling many more operations at peak hours than the facilities could handle, even in good weather.

Therefore, in January, Secretary Dole announced the beginning of a series of investigations covering airline scheduling practices at the most delay-prone airports in the United States. Also, the Department proposed that the airlines hold discussions to "smooth out" their schedules at airports where the carriers had more operations during certain times than the airports could handle.

As a result of the scheduling discussions, most major airlines at five airports—Newark, Philadelphia, O'Hare, Atlanta, and Dallas/Fort Worth—made significant adjustments which will eliminate a great many of the delays that travelers would have suffered this summer. As you know, we were disappinted that changes at Atlanta Hartsfield International fell significantly short of the FAA's target, but we continue to work to resolve the situation.

In our first airport scheduling investigation—covering Atlanta—the Department found a high level of discrepancies between the schedules published by Delta and Eastern Airlines and the actual operating times of these carriers. Two weeks ago, on April 9, we issued a Show Cause Order summarizing the result of our investigation and tentatively concluding that Delta and Eastern may be violating Section 411 of the Federal Aviation Act by engaging in unrealistic scheduling practices. We will allow 30 days for comments on the order to be followed by 10 days for answers, after which the Department will decide whether to recommend that our enforcement staff file a formal enforcement complaint against the carriers. If that happens, we expect there to be an oral evidentiary hearing before an Administrative Law Judge who will issue a decision. That decision will be reviewed by myself or the Secretary.

There is no reason to believe that the scheduling discrepancies found in Atlanta are limited to that airport. Therefore, the Department has commenced investigations of three additional facilities experiencing a high number of delays, Chicago O'Hare, Boston Logan, and Dallas/Fort Worth. We expect to receive an extensive amount of data on flights to and from these airports by next Monday, and that data will be evaluated, not only for enforcement

purposes, but also to help determine if rulemaking or other administrative action is warranted.

Mr. Chairman, as you know, the argument is often advanced that the best way to eliminate delays is to expand airport and airways capacity. I would like to point out that we have been moving aggressively to do just that. As a result, today's air traffic control system is handling far more traffic than at anytime in history.

Because DOT has been unfairly and sometimes incorrectly accused of not doing enough in this regard, I would like to describe the full range of our efforts.

First, Secretary Dole announced plans in September of 1985 to add nearly 1,000 controllers over a two year period. She has been doing that, and the air traffic control work force now is about 15,000, handling over 150,000 flights a day.

Second, we are moving ahead steadily with a ten year, $12 billion modernization of our air traffic control system, the National Air-Space System Plan. Seventy-five percent of the NAS Plan projects are now under contract. We have managed this in spite of the fact that for the last six years Congress has appropriated almost $944.8 million less than the Administration requested for the NAS Plan.

Third, FAA teams are reviewing air traffic procedures on an airport-by-airport basis. The first review at San Francisco Airport resulted in a 40 to 50 percent reduction in delays.

Fourth, the FAA revised its East Coast traffic procedures, and in the first six weeks under these new procedures delays at three major New York area airports were reduced 48 percent. A similar plan is in the works for the West Coast.

Fifth, the Department has proposed authorizing more than $1 billion annually for airport grants, together with restructuring the airport improvement program to focus funds on capacity enhancement.

Finally, Secretary Dole's budget request calls for an overall increase of 20 percent in funds for the aviation system.

Mr Chairman, I think our programs represent a comprehensive and well-planned effort to increase airport and airway capacity. With that said, I think it only prudent to note that very often capacity cannot be expanded at airports because the facility is surrounded by development and other environmental restrictions. Again, capacity management is a key to our efforts.

Consumer complaints, whether delay related or centering on some other area, appear to be related to recent airline mergers and acquisitions. During the past year almost 70 percent of the largest aviation system in the world—with over 400,000,000 passengers carried—was touched by consolidation activities. It shouldn't be surprising that there would be at least a temporary increase in service problems and consumer complaints. We at the Department experienced our own merger problems with the Sunset of the CAB and the integration of that agency into DOT. Our computer capabilities, for instance, continue to adjust to the agency merger. However, as to the aviation situation, we think it is likely that problems will be corrected as the affected airlines complete the operational side of their mergers. But we don't plan on leaving that to chance. The department has taken these steps to alleviate the difficulties.

We are sending an industry letter to carriers reminding them of DOT's consumer rules and policies, particularly in those areas where we are seeing more complaints.

A special consumer task force has been established to investigate increased consumer complaints and meet with representatives of top management of each airline.

Our Aviation Enforcement Office is investigating the consumer service practices of several major airlines and will be taking enforcement action against those airlines which are found to be violating our rules.

Furthermore, last year we began an informal investigation into economic flight cancellations. This investigation should be concluded shortly.

Finally, in the order instituting the U.S. Air/Piedmont merger proceeding, we asked for evidence that the carriers would be able to integrate operations smoothly so as to avoid consumer problems we have found in previous mergers.

In a related matter, there is the issue of the Department of Transportation's responsibilities under the Federal Aviation Act which govern our review of mergers and acquisitions.

As you know, the Department's antitrust authority under Section 408 and 409 and related portions of Section 414, terminates on January 1, 1989. We are recommending acceleration of the Sunset date to affect the immediate repeal of Sections 408 and 409. In our view, there is no basis for subjecting airlines to special administrative oversight. Rather, airlines should be subject to the standards of the Clayton Act which are more effective and less burdensome than those required by Section 408.

Mr. Chairman, members of the committee, I would be delighted to answer questions.

[The statement follows:]

STATEMENT OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Good morning, Mr. Chairman and members of the subcommittee. It is a pleasure to be here today to discuss a number of topical issues relating to developments in our airline industry. I would like to touch on the department's merger policy and, in that regard, our treatment of labor protective provisions. I would also like to briefly review our outlook on the sunset of the department's antitrust authority and how that would affect the labor protective provisions. Finally, I will discuss how we are responding to the recent increase in consumer complaints about airline delays and other consumer problems.

As you know, Mr. Chairman, the department retains an obligation to review airline mergers and acquisitions. That responsibility was set out by Congress in the Airline Deregulation Act which amended the Federal Aviation Act. It is section 408 of the Federal Aviation Act that governs airline mergers and acquisitions.

In enacting the deregulation measure, Congress indicated that section 408 must be administered consistent with the national intent to move the industry rapidly toward deregulation. The conference report to the deregulation act stated clearly that, "The foundation of the new airline legislation is that it is in the public interest to allow the airline industry to be governed by the forces of the marketplace."

Section 408 requires the department to approve an acquisition (1) that will not result in a monopoly or further an attempted monopoly and that will not likely lessen competition substantially in any region of the United States, and (2) that is not inconsistent with the public interest. It further requires the department to disapprove transactions that do not satisfy these standards, unless the department finds that they meet significant transportation needs and conveniences of the public that cannot be met through any reasonably available alternative transaction that would be materially less anti-competitive.

The primary focus, then, of the Department's inquiry in each merger case is, as Congress intended, on the competitive consequences of the transaction. With our eye on this target, Mr. Chairman, we recognize that deregulation gave airlines the right to enter and exit markets without governmental supervision. And we also recognize that the effective exercise of this right is essential to ensuring a competitive airline industry. It provides carriers with the opportunity to choose the markets they will serve and to respond to any perceived deficiencies in market performance. There is little doubt that freedom of entry exerts considerable pressure on incumbent carriers to provide competitive fares and services, and that entry barriers have precisely the opposite effect.

It is against this background that the department, in revewing airline mergers and acquisitions, carefully examines the degree to which other carriers can freely and effectively enter the markets that will be served by the merged carriers. We review the applicant's national market share and consider whether there are significant barrriers to entry at the airports which they serve. Where the freedom to enter a market is not unduly constrained, and can be relied upon to maintain the consumer benefits afforded by meaningful competition, the department believes that mergers are fully consistent with the applicable statutory requirements and should be appoved.

Mr. Chairman, since the beginning of 1985, the department has reviewed and approved 19 applications for merger or aquisition of control involving large certificated air carriers. We are also currently reviewing the proposed acquisition of Piedmont Airlines by USAIR. Most of these cases were non-controversial, that is, there was no policy opposition within the Federal Government. Only three applications were contested by the Department of Justice—contrary, I believe, to some common misconceptions—and in just two of those did we approve acquisitions that justice thought should be disapproved.

As to the consideration of labor protective provisions in relation to the mergers, Mr. Chairman, while the Airline Deregulation Act retained the public interest standards of section 408, Congress, as already noted, made it clear that those standards were to be interpreted in light of the intent of Congress to move the airline industry rapidly toward deregulation. As a result, both the Department and the civil Aeronautics Board have narrowly construed the public interest aspects of merger and control transactions so that the public interest standards did not become a tool for routinely second-guessing airline business decisions.

Generally speaking, the public interest issues raised in merger cases have been labor related. As directed by the act, the Department has considered the likely impact of each transaction on fair wages and equitable working conditions. We have reviewed the record in each case to determine whether the employees' interests can be adequately protected through the collective bargaining process, and, if not, whether the Department should intervene in labor-management issues by imposing labor protective provisons.

In reviewing merger aspplications, the Department has followed the LPP policy originally established by the Civil Aeronautics Board. Under that policy, LPP's are imposed only if necessary to prevent labor strife that could disrupt the National air transportation system or if special circumstances make LPP's necessary for the encouragement of fair wages and equitable working conditions.

This approach is consistent with the guidance set by the deregulation act that Government not interfere with the economic decisions of airline management. That principle is equally valid for Labor Relations matters, which should be settled by the private parties—management and labor. Furthermore, traditional LPP's determine the benefits payable to employees affected by a merger and require a fair integration of seniority, if need be through an arbitration proceeding. Thus, we prefer that these matters be settled through collective bargaining rather than imposed LPP's.

In the merger cases reviewed by the Department thus far, there have been no special circumstances that made LPP's necessary for fair wages and working conditions. Collective bargaining has been shown to be effective means of protecting the employees' interests, including seniority rights. Some unions bargained for LPP's; others sought different benefits.

To date, the Department's appoval of mergers without LPP's has not led to labor-management disputes resulting in strikes. We recognize, however, that the airline industry isn't immune to labor problems which could result from collective bargaining on merger issues, just as other industries aren't immune to labor problems which result notwithstanding the availability of collective bargaining. In spite of the lack of guaranteed success, the process of collective bargaining has survived in other industries because it is the fairest, most productive system we have found for resolv-

ing labor-management disputes. A reliance on free collective bargaining appears equally appropriate for the airline industry, at least as long as labor-management disputes do not disrupt the national air transportation system.

On the larger issue of anitrust sunset, Mr. Chairman, the Department's antitrust authority under sections 408 and 409, and the related portion of section 414, terminates on January 1, 1989. As you know, we are recommending acceleration of the sunset date to effect the immediate repeal of sections 408 and 409.

The airline industry is mature and highly competitive and should be treated like any other industry in our economy. There is no basis for subjecting airlines to special administrative oversight. Rather, airlines should be subject to the standards and procedures of the Clayton Act, including the procedures of the Hart-Scott-Rodino Antitrust Improvements Act, which are more effective and less burdensome than those required by section 408.

Experience has demonstrated that application of the antitrust laws is far better suited to the dynamic needs of a competitive industry than the prior approval requirements imposed by the Federal Aviation Act. Early sunset of sections 408 and 409, moreover, will provide for a more efficient use of government resources, for the competitive effects of airline transactions would no longer require simultaneous review by two separate departments.

Concerns have been raised that a merger or acquisition involving international carriers might bring special problems calling for the attention of the Department, but this does not require that section 408 be retained. Matters such as foreign relations and national defense ramifications will still be considered by the Department through section 401(h) of the act, which will not be sunset.

Regarding the Department's authority over domestic agreements under section 412, and the related portion of section 414, the act provides that this authority shall also cease to be in effect on January 1, 1989. We support, in principle, the provision of S. 806 that would terminate this authority on October 1, 1987, but the Department of Justice has drafted more comprehensive language to accomplish this objective.

Consistent with our policy relating to the other antitrust statutes, the Department believes that, in general, the grant of approval and antitrust immunity to demestic agreements is contrary to the goals of deregulation. To further that policy, the Department has attempted to apply the standards of legality of the Sherman Act in reviewing domestic airline agreements. We believe that our decisions are consistent with appropriate judicial precedents developed in unregulated industries. Because airlines have received no special protection for their domestic agreements, we have had less than a half dozen requests for approval of such agreement. Consequently, since these sections do not require prior approval of a domestic agreement, and airlines have not used them to any significant degree in recent years, their elimination should pose no problem.

For a time we believed that the current sunset date of January 1, 1989, for section 412 authority should be retained to enable us to complete the process of reviewing and terminating outstanding domestic appprovals, and immunities. However, such a review may not be necessary. The most significant domestic agreements have been considered, and it does not appear that any of the outstanding approvals and conferrals of immunity that remain are of consequence.

Mr. Chairman, the act does not provide for the sunset of the Department's authority to approve and immunize international agreements under sections 412 and 414. Correctly so. This international authority should be retained at the Department of Transportation indefinitely, consistent with the intent of the 1984 Sunset Act.

Our authority to approve and immunize international agreements is an important element in the conduct of U.S. international aviation policy and regulatory oversight. Although we would prefer not to regulate fares and rates in international air transportation, where such regulation is practiced by trading partners, we are compelled to respond in the interest of liberalizing fare and rate practices or to restrain the more restrictive regimes of foreign aviation partners. This important tool also allows us to address special foreign relations issues—for example, those raised in dealing with non-market economies.

And, Mr. Chairman, if Congress enacts early sunset of section 408, as recommended by the administration, the Department will not lose its authority to impose labor conditions where required by the public interest for the maintenance of international air service. The retention of section 401(h) authority over transfers of international certificate authority includes the power to impose conditions required by the public interest. While the Department would no longer have the authority to impose LPP's on domestic transactions that result would be consistent with the deregulation of the industry.

I know this committee is interested in covering a number of aviation-related consumer issues. As I begin, I think it is vital to acknowledge at the outset that 1986 was a watershed year for the U.S. aviation industry. The structure of this sector changed dramatically, a lot of stress and strain resulted. Certainly, the carriers could have handled many of the resultant problems better, and should have anticipated the advent of these problems more astutely.

In this regard, consumer complaints coming to the Department of Transportation have risen dramatically over the past year. However, caution must be exercised when interpreting the Department's complaint numbers as most complaints are made directly to the airlines rather than to DOT and therefore DOT's records are not necessarily representative of the true pattern of consumer problems. One thing is very clear though, the vast majority of complaints focus on airline delays and I will concentrate on why delays occur and how the Department is responding to the problem.

At the 22 busiest airports, there were 367,000 delays recorded by the FAA in 1986, compared to 295,000 during 1985—a 25 percent increase. While an estimated 65 to 70 percent of these delays were weather-related, we investigated and found clear cut evidence that at many airports the airlines were scheduling more operations at peak hours than the facilities could handle, even in good whether.

Therefore, in January Secretary Dole announced the beginning of a series of formal investigations covering airline scheduling practices at the most delay-prone airports in the U.S. Also, the Department proposed that the airlines hold discussions to "smooth out" their schedules at airports where the carriers had more operations during certain times than the airports could handle.

As a result of the scheduling discussions, most major airlines at five airports—Newark, Philadelphia, O'Hare, Atlanta, and Dallas-Ft. Worth—made significant adjustments which will eliminate a great many delays that travelers would have suffered this summer. As you know, we were disappointed that changes at Atlanta Hartsfield International Airport fell significantly short of the FAA's target. This was largely due to an unwillingness by Delta Airlines to make major scheduling changes. Delta's lack of cooperation also meant that the changes at Dallas-Ft. Worth, where Delta is the second largest operator, fell somewhat short of the goal.

In our first airport scheduling investigation—covering Atlanta—the Department found a high level of discrepancies between the schedules published by Delta and Eastern Airlines and the actual operating times of these carriers. On April 9, we issued a showcause order summarizing the results of our investigation and tentatively concluding that Delta and Eastern may be violating section 411 of the Federal Aviation Act by engaging in unrealistic scheduling practices. We allowed 30 days for comments on the order, to be followed by 10 days for answers, after which we will decide whether to recommend that the DOT enforcement staff take action against the carriers. If that happens, we expect there to be an oral evidentiary hearing before an administrative law judge who will issue a recommended decision based on the full record. That decision will be reviewed by myself or the Secretary.

There is no reason to believe that the kind of scheduling discrepancies found in Atlanta are limited to that airport. Therefore, the Department has commenced investigations of three other airports experiencing a high number of delays—Chicago O'Hare, Boston Logan, and Dallas-Ft. Worth airports. We expect to receive an extensive amount of data on flights to and from these facilities by next Monday and that data will be evaluated, not only for enforcement purposes, but also to help determine if rulemaking or other administrative action is warranted.

Airline computer reservations systems (CRS) have had a powerful effect on airline scheduling practices and we are looking into this. Though not directly linked to the delay initiatives, the Department's ongoing investigation of the computer reservation system should shed light on whether methods employed for listing flight information encourages unrealsitic or deceptiove scheduling to improve postions on the display screen.

Mr. Chairman, as you know, the argument is oftern advanced that the best way to eliminate delays is to expand airport and airway capacity. I would like to point out that we have been moving aggressively to do just that, and, as a result, today's air traffic control system is handling far more traffic than at any time in history.

Because DOT has been unfairly and incorrectly accused of not doing enough in this regard, I would like to describe the full range of our efforts here:

Controllers: Secretary Dole announced plans in September 1985 to add nearly 1,000 controllers over the next two years, and, as a result, the controller work force will reach at least 15,000 by September 30, 1987. She has requested funds for an additional 225 controllers for fiscal year 1988, which will bring the controller workforce to a minimum of 15,225.

National airspace system plan: We are now in the 5th year of a 10-year, $12 billion modernization and expansion of the air traffic control system. Some 75 percent of the NAS plan projects are now under contract. This will rise to almost 90 percent by September 30, 1987. By late 1987, new air traffic computers will be delivered to all 20 of FAA's en route traffic control centers located in the continental U.S. These computers will be 10 times faster and have four times the capacity of the computers being replaced.

"Tiger teams": FAA teams are reviewing air traffic procedures on an airport-by-airport basis. The first such review, at San Francisco airport, resulted in a 40–50 percent reduction of delays.

East coast and west coast plans: In February, after more than a year's planning, FAA extensively revised its east coast traffic procedures. In the first six weeks under the new procedures, delays at the three major New York area airports were reduced 48 percent. A similar plan is in the works for the west coast.

Airport improvement: In legislation pending before Congress, we have proposed authorizing more than $1 billion annually for airport grants, together with restructuring the airport improvement program to focus funds on capacity enhancement. If local governments which have congested airports are supportive of groundside capacity improvements, (which is not always the case) we are confident our airport funding proposals will provide ample federal support for those projects.

Budget requests: Secretary Dole's fiscal year 1988 budget request calls for an overall 20 percent increase (over the current level) in funds for the aviation system, including a 68 percent increase (over what Congress appropriated for fiscal year 1987) for NAS plan facilities and equipment. In the last six years, Congress has appropriated $944.8 million less than the Reagan administration requested for the NAS plan. And we are troubled that the fiscal year 1988 budget that appears headed for adoption by Congress will not culminate in the level of FAA funding we have requested.

Mr. Chairman, I think our programs represent a comprehensive and well-planned effort to increase airport and airway capacity. With that said, I think it only prudent to note that very often capacity cannot be expanded at airports because the facility is surrounded by development and other environmental restrictions. Again, capacity management is a key to our efforts. It is not unlike a situation many of us tackle every morning. Most arrive at work between 8:00 and 9:00 a.m. That leads to road congestion and the need to manage our automobile traffic. Often it simply isn't possible to build new highways, bridges and roads.

Now I would like to turn to consumer complaints in other areas and explain how DOT has responded. First of all, I should note that we have a consumer affairs office which assists consumers in resolving complaints about airline service when the consumer has been unable to get satisfaction from the airline directly.

Complaints may be filed with DOT by telephone or letter and all those received are automatically registered in our records. If the Department's staff analyst is unable to answer a consumer's question immediately, the analyst then contacts designated expediters at the major airline in question to seek further information and attempts to resolve the problem. The analyst then telephones the consumer with the results.

Although not every problem can be handled to the consumer's satisfaction, the Department has found that consumers appreciate a personal explanation of the rules and regulations governing airlines. By using the telephone whenever possible, and employing computers for recordkeeping and analysis, DOT has greatly improved upon CAB's procedures, which relied on form letters. This has greatly speeded our responsiveness to consumers. Complaints are now normally processed in a matter of hours or days instead of months. Thus, of the nearly 17,000 cases filed with the Department in 1986, 98.8 percent were closed out by January 7, 1987.

Consumer complaints, whether delay-caused or centering on some other area, appear to be primarily related to a "shaking out" of the industry coming in the wake of airline mergers and acquisitions. During the past year, almost 70 percent of the industry was involved in consolidation activities. It shouldn't be surprising, then, that there would be at least a temporary increase in service problems and consumer complaints. We at the Department experienced our own "merger problems" with the sunset of the CAB and integration of that agency into DOT. Our computer capabilities, for instance, continue to adjust to the agency merger. However, as to the aviation situation, we think it is likely that problems will be corrected as the affected airlines complete the operational side of their mergers. But we don't plan on leaving that to chance. The Department has taken these steps to alleviate the difficulties:

Industry letter: We are sending an "industry letter" to carriers to remind them of the Department's consumer rules and policies, particularly in the areas where we have been seeing more complaints.

Special consumer task force: We have established a special task force to look into the increased consumer complaints and meet with representatives of the top management of each airline. We hope that, for the most part, the task force can work out corrective actions for these problems directly with the carriers. However, if th is is not sufficient, we expect the task force to provide recommendations for any enforcement, regulatory, or other actions that DOT should take. We intend for the task force to complete its work as quickly as possible—within the next two to three months.

Enforcement: Our aviation enforcement office is investing the consumer service practices of several major airlines and will take necessary enforcement action against airlines which are found to be violating our rules.

Flight cancellation investigation: Late last year, the Department began an informal investigation into "economic flight cancellations." We contacted several airlines which we believed might have a problem in this area and obtained detailed information from them about cancelled flights and their cancellation policies. By expect to complete the investigation shortly.

Evidence request for mergers: In the order instituting the USAir-Piedmont merger proceeding, we asked for evidence that the carriers would be able to integrate operations smoothly, so as to avoid consumer problems.

Mr. Chairman, the structure of the aviation sector has changed dramatically bringing with it some benefits in the form of a stronger, more efficient industry, but also some disturbing problems in the form of consumer complaints. We have begun a series of actions to turn these problems around and we are considering taking stronger action, including rulemaking if necessary.

Thank you for inviting me to testify before this subcommittee.

Senator FORD. Thank you very much.

Mr. Plaskett.

Mr. PLASKETT. Thank you very much, Mr. Chairman, and Members of the Aviation Subcommittee. Thank you for the opportunity to appear before you today. My name is Tom Plaskett, and I am President and Chief Executive Officer of Continental Airlines.

During recent months, Congressional interest has been heightened about several consumer issues in the airline industry. Given my 13 years of experience in airline finance, marketing and customer service, I particularly welcome the opportunity to address your concerns and these important issues and to serve on such a distinguished panel, especially with a friend, former business colleague and tutor in the art of competition, Mr. Crandall.

Let me begin by saying that your concerns are no less deep than ours. There are positive steps to improve the consistency of airline service which we believe can be taken and should be taken very quickly.

On Monday we filed a petition for rulemaking with the Department of Transportation. This petition seeks uniform industry reporting as to on-time performance, baggage handling, flight completions, reservation service responsiveness and specialized disclosure as to the availability of discount fares.

Attention to customer service is not new to us in this industry. Meeting customer needs is the lifeblood of our very existence. Continental has standards and quality control measurement systems to monitor our performance and customer service on a daily basis. Any system irregularity, such as delays, are analyzed for cause and corrective action through a daily conference call with hub managers, flight operations and maintenance personnel and regional officers.

Reservation centers are monitored continually. Each station general manager has quality control standards such as ticket counter waiting time and baggage delivery. We also have unidentified quality control personnel who monitor in-flight service as well as employees who voluntarily report deviations from our standards that they view while traveling throughout the system. Of course, we catalog and monitor very carefully written and verbal feedback we receive from our customers.

Quality control systems are used to identify problems. We are not satisfied with the level of service even considering the complexity of integrations that we have gone through since February. We are committed to achieving our own standards as quickly as possible, and we have made great progress in that regard.

To put these issues into perspective, Continental boards about 1 million passengers per week. Each week we receive roughly 2,000 written customer letters, both favorable and critical. Rather than taking an anecdotal approach to customer service issues, we decided to further evaluate the matter by going directly to travelers.

Continental has commissioned and completed an independent survey of 1,000 adult frequent travelers nationwide. Sixty-five percent disagreed or disagreed strongly with the notion that the airline industry does a poor job of communicating with the American public.

Rating baggage service, 60 percent of the respondents thought it was about the same as a year ago.

As to on-time performance, 43 percent thought it was worse than one year ago, and that is a clear indication of a serious deficiency in the Nation's primary intercity transportation system.

Respondents were also asked their opinions about truth in airline advertising. Fifty-two percent thought it was about as truthful as one year ago.

After extensive internal discussions over the past few months, a comprehensive review of consumer feedback and these recent survey results, we finalized a set of rulemaking proposals that we believe will be most effective in improving the efficiency of the air transportation marketplace. The fundamental premise of our proposal is that if the consumer is given useful and meaningful comparative information, the consumer will be the best regulator of the marketplace.

Since the bulk of all flights today are to and from hubs, the most useful measure for the consumer is system and individual hub performance. All carriers should disclose the percentage of late departures to and from its hubs and on its system as a whole on a monthly basis.

We also propose that carriers disclose their flight completion factors by individual hub and total system.

The third important area for measurement is baggage handling. Airlines should report the number of customers whose baggage is properly handled per thousand passengers enplaned.

A fourth measure of customer service is responsiveness with respect to answering reservations calls.

Finally, information as to availability of seats at discount fares has received significant comment of late. Continental proposes that carriers indicate in a meaningful way the opportunity for consum-

ers to take advantage of special fares. We used this approach in selected cities shortly after we introduced Max$avers, and on Monday we committed to using this approach systemwide with our summer extension of Max$avers. We are the only airline to adopt any system for consumer disclosure in this area.

Continental ads indicate the demand between particular city fares as low, moderate or high, and attached to my testimony is a copy of one of our demand disclosure advertisements.

One Congressional proposal deals with specific fare type or segment type discount seat availability data. If, for example, we published just the seat availability by discount fare category to and from the New York City area on Continental flights, it would take nearly 50 pages. What we have done here is produce a sample ad where we disclose seat availability on all discount fare types to and from the New York City area. At a rate of $33,279 per page in the New York Times, that would amount to about $1.7 million to communicate that information in printed form.

Of course, with 4,500 domestic markets and seat availability changing literally by the minute, the information would be out of date before it ever reached the publisher.

Now let me briefly turn to the issue of integrations, because integrations of carriers have certainly contributed to the problems in customer service, and Newark is the best example.

The financial condition of People Express when we acquired the airline on December 30, 1986 necessitated that we had to undertake something never before tried in the airline industry. We integrated three carriers into one for marketing purposes with 175 flights a day out of Newark on the first day.

The only alternative to this approach would have been to shut People Express down, immediately put 4,000 people out of work, and rebuild it slowly, thereby seriously disrupting travel for 500,000 people a month by depriving them of a seat or a ticket they had already purchased, or forcing them to pay substantially higher prices on other carriers. On balance, we believe consumers were far better served by our decision to complete the People Express transformation from a no frills carrier to a full service airline overnight.

Continental has a longstanding history of customer service. The magnitude of the challenges we faced during the last four months, particularly with the unusually severe weather conditions in the northeast during February and March, has not diminished our commitment. Let me share with you what has happened in the last 100 days.

Prior to February 1, load factors at People Express for Newark flights were consistently in the low 30s. Now they are in the mid 60s. Departures within 15 minutes in February were around 50 percent. Now they are in the high 70s.

We believe that, given a reasonable break on the weather and normal passenger loads, the Newark hub can and will provide a very reliable product. Indeed, I believe that we have recovered faster than any other combination of carriers in recent history. The credit for this achievement belongs to Continental's people, and we are proud of them.

One additional point, Mr. Chairman, I would like to make, and that is to address the hypothesis that labor cost disparities cause

service lapses. That is a hypothesis that we would reject. Today the airline industry is growing very rapidly. It is hiring thousands of new employees. New employees entering the industry today are entering at comparable wage levels.

The labor cost disparities have been created by employees who were sheltered during 40 years of economic regulation, where the costs of those employees were passed through to the consuming public. Without market-based costs, consumers would once again pay the bill for artificially high wages and benefits. We do not believe that asking the government to solve management's labor cost problem is appropriate and is a return to a comfortable economic cocoon.

A safe, reliable, high value, affordable full service product is what Continental people always strive to provide. We will continue to be responsive to consumer needs.

Finally, we would urge you to consider the petition we filed on Monday as the most effective means of improving the consumers' use of the air transportation system.

Thank you, and I look forward to responding to your questions.

[The statement follows:]

STATEMENT OF THOMAS G. PLASKETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CONTINENTAL AIRLINES

Mr. Chairman, members of the Aviation Subcommittee, I am pleased to have the opportunity to appear before you today. My name is Tom Plaskett, and since November of last year, I have been President and Chief Executive Officer of Continental Airlines. Prior to my joining Continental, I was Senior Vice President for Marketing at American Airlines for six years.

I have been involved particularly in the marketing side of the airline industry as it has evolved from a highly regulated environment into its present state. Given my background, I particularly welcome the opportunity to address the consumer issues that have been the focus of Congressional interest during recent months. Your concern is no less deep than is ours in the industry.

There are positive steps that can be taken fairly quickly. It is for this reason that Continental filed a Petition for Rulemaking with the Department of Transportation on Monday. Continental's Petition asks for uniform industry reporting as to departure performance, baggage handling, completion factor, reservation service responsiveness, and specialized disclosure as to availability of discount seats.

Continental's Petition was filed only after much thought as to what would be truly useful to consumers. I must caution that many ideas which are cloaked in the "pro-consumer" mantle may in fact be anti-consumer, either because they raise price disproportionate to benefit or they provide information which in fact misleads the consumer. The rulemaking process is particularly well suited to sorting out these choices. I would urge the committee to indicate to the Department of Transportation areas of concern and hold the Department to strict time frames within which to act. I would also strongly recommend that the committee not go beyond this point because of the technical nature of the issue.

The Airline Deregulation Act of 1978 is perhaps the most pro-consumer legislation Congress has enacted in almost a decade. Real competition has brought billions of dollars of savings to the consumer. The competition for customers has resulted in tremendous flexibility for consumers as they design their air travel plans. In many areas, frequency of service has increased dramatically, particularly with implementation of the hub concept.

The seminal question is how much a person is willing to pay for these services, and what should be expected in return in terms of quality.

The consumer is confronted with a plethora of choices. Is Max$aver better than a Supersaver? Do I have my plans firm enough so that I can get a 30-day, 14-day or a 2-day advance purchase, and if so, is there any refund if I change my plans? What if I decided to fly on the spur of the moment—which airline has the best fares? The best service? Must I buy a round-trip ticket, fly on Tuesday or Wednesday, stay over at least one Saturday, or use the fare only during non-holiday periods? Will the

miles I fly get me over the frequent flyer hump so I can get that free ticket to London this spring? More importantly, will I pay a higher fare now so that the miles flown will be credited to the "right" frequent flyer account, rather than take a Max$aver on another carrier?

What all these different choices indicate is that with deregulation air carriers have been able to better appeal to more varied segments of the market. This has in turn stimulated traffic growth to record levels and even more importantly, has greatly expanded the segment of the population that is able to take advantage of air travel. Underlying all of this is the fact that expenditures for air travel are largely discretionary. In today's world, individuals and businesses are even more conscious of their ever skrinking discretionary dollar. For air transportation to continue its growth, air fares must be priced within reach of the discretionary segment of the consumers' income.

In 1986, the number of revenue passengers enplaned was nearly 360 million, as compared to 207 million ten years ago. That translates into 282.6 billion revenue passenger miles for 1986 compared with 149.8 billion in 1976. In terms of available seat miles, in 1976 there were only 266.6 billion whereas 1986 witnessed nearly 464.5 billion, almost a 75 percent increase. Load factors increased from 56.1 to 60.8 over that same ten-year period.

During recent months, however, there appears to be widespread consumer disaffection with arrival and departure delays, flight cancellations, inability to make telephone reservations, lost or misdirected baggage, and advertised discount fares that are not actually available. All of these problems have a common denominator: for good and logical reasons, the marketplace does not now produce adequate information about these attributes of airline service performance.

Notwithstanding the myriad of choices and fares, consumers have enjoyed substantial savings. A 1986 Brookings Institution study found that deregulation improved the welfare of travelers in terms of decreased fares and increased service by $6 billion annually (in 1987 dollars). The advent of deregulation has spawned not only these types of gains but also an unprecedented period of consolidation, much of it in the last two years. Throughout this process, jobs have been preserved and service has been enhanced in terms of cities served. Please let me take a few moments to talk about the Continental experience.

Since 1983 Continental alone has saved the consumer about $4 billion in air fares. Employment at Continental in 1983 reached an all-time low of 4,000. Since that time, employment has grown to 28,000, which is 16,000 above the "normalized" 12,000 pre-1983 employment level. This figure includes many former Frontier and People Express employees whose companies were either in or on the brink of bankruptcy. Continental has doubled its size in the past three months while its load factors have remained virtually the same. Although there are those who are critical of Continental's decision to integrate People Express and New York Air in the manner that we did, please allow me to shed some light on the reasons for that decision.

New York Air, of course, was a carrier whose birth came from our holding company, Texas Air Corporation. On February 1, New York Air and People Express were integrated with Continental for marketing purposes. Although the People Express acquisition was not consummated until December 31, 1986, by the time the requisite shareholder approvals were acquired, the holding company had invested $120 million just to keep People Express operational, yet load factors were consistently in the 30's. We had two options—either shut People Express down and build it back slowly, putting 4,000 people out of work, or attempt to complete what People Express had started—conversion from a no frills carrier into a full service airline, but in a much compressed time period. We chose the latter course and poured millions of dollars and thousands of manhours into the conversion effort.

In choosing this approach, Continental embarked upon an effort never attempted by the airline industry in either a regulated or deregulated environment. Overnight Contintental began operating 175 flights per day out of Newark. These flights were also immediately People's low fare strategy—to a full service airline.

One of the most obvious problems we confronted was onboard meal service—a frill not part of People's previous existence. That immediately presented problems such as catering and proper training of flight attendants to provide this service. Prior to that, flight attendants spent a great deal of time collecting fares inflight.

Immediate on-the-job training was required at ticket counters, which were being moved from the North Terminal at Newark into Terminal B. Although People Express had a very dedicated workforce, the no frills approach included neither the use of computers nor complicated ticketing arrangements. Our Chief Operating Officer was immediately dispatched to Newark, along with 125 of Continental's best people from throughout our system. Initially, processing time—the time required to

get through ticketing lines—took 20 to 25 minutes during peak periods, and 12 to 15 minutes on average. Now that processing time has decreased to 7 to 8 minutes during peak periods, and 5 minutes on average.

Lost bags were an initial problem because of the overnight change from "carry your own" to Continental's checked baggage system. Through additional training and the use of an outside contractor, lost bag problems have essentially been resolved. Last Tuesday, April 14, there were only 52 lost bags on hand, and most of them did not have proper identification.

Now, let us focus on the early numerical indicators. Prior to the shift to full service on February 1, People Express load factors were consistently in the low 30's as I mentioned earlier. Load factors on Newark flights jumped into the 60 percent range with the introduction of Continental's service and are holding steady in that area. This is consistent with system experience. So even with this essentially overnight doubling in size and operations, our load factors have remained at a very respectable level.

In February, departures within 15 minutes of schedule from our Newark hub were around 50 percent. In March, this increased dramatically to 70 percent. In early April, we reached the high 70's. On Tuesday the 14th, which was a good weather day, 88 percent of our Newark flights—now up to 181 per day—left within 15 minutes of scheduled departure. Seventy-two percent arrived within 15 minutes at their destination. This demonstrates to me that given a reasonable break on the weather and normal passenger loads, the Newark hub is capable of providing a very reliable product. The fact that our people have been able to achieve this level of performance in three-and-a-half months is a tribute to their dedication, hard work and sense of pride.

There was another problem in the People Express transformation—no-shows and overbooking. Included in most ticket folders is information regarding overbooking of flights, disclosing the possibility that a seat will not be available on a flight for which a person has a confirmed reservation. Prior to February 1, People Express was experiencing a 70 to 80 percent no-show factor. Traditional no-show factors on the East Coast are 25 to 40 percent. the unreliable data regarding historic no-show patterns at Newark required several weeks just to gather adequate experience and data to accurately forecast this factor and adjust overbooking levels accordingly. Now the no-show factor at Newark is down to under 20 percent and we are still working to make our forecasts more reliable.

Operationally, year in and year out, Continental has been one of the best on-time performance airlines in the business. For example, in 1986, 78.8 percent of all Continental flights departed within 15 minutes of their scheduled departure time. This places Continental consistently in the top two or three major carriers in the industry.

Continental's responsiveness to consumer demand has been evidenced in a myriad of other ways. Since 1984, Continental has been engaged in a constant upgrading of its fleet. We have added 114 new Stage III aircraft. Continental has introduced innovations ranging from the use of ticketing machines similar to automatic tellers, to our Redi-trip service and to a bank credit card that accumulates frequent flyer miles with any purchase. Redi-trip allows frequent travelers to call ahead, give a credit card number and flight itinerary. Awaiting them at a special ticket counter is a ticket folder, complete with baggage claim checks and boarding passes. Indeed, the seats will be held until the gate close.

Continental has been both creative and responsive in terms of onboard meal service. Fresh fruit and yogurt, wine tastings, and speciality ice cream have all been in response to consumer demand and product differentiation .

Even in the face of all these efforts to provide what consumers want, we have remained a price leader in the industry. A prefect example was our implementation of Max$avers, which much of the industry followed but soon decided to curtail. By May 20, which is the date on which the Max$avers announced in February expire, passengers traveling on Continental and Eastern will have saved $100 million. With other airlines offering similar fares, Max$avers will have saved U.S. travelers more than $500 million by May 20. At the outset we announced that 2 million seats would be available at these fares each month.

On Monday, I announced the extension of Max$aver fares for the summer. These fares will be slightly higher, ranging from $19–$139 each way, compared to the current $19–$99. Advance purchase will increase from two to seven days. Nevertheless, summer Max$avers will average $10 less each way than this summer's lowest supersaver fare postes prior to last Monday and they are generally lower than last summer's fares.

There are growing pains still being experiences from deregulation to be sure. There are also problems attendant to consolidation in the industry. The deck appears to be stacked, however, against the industry. As carriers compete with all sorts of marketing schemes to appeal to the masses, and this is coupled with the rapid growth and unprecedented transition in the industry, one would expect to hear cries for varying degrees of service and more information. Add to this confusion the industry's attempt to deal with the on-going effects of the PATCO strike and an FAA that is grossly under-funded, despite a trust fund surplus that is projected to reach between $12 and $16 billion by 1992.

Continental firmly believes that the industry must be responsive to consumer demands. We have attempted to prove our responsiveness—and I believe we have been successful—by offering, with the notable exception of February and part of March 1987, highly reliable, high value air travel to the consuming public.

Nonetheless, the question arises as to what and how much do consumers want to know? Continental decided to ask for ourselves to determine the depth and breadth, if any, of alleged consumer dissatisfaction. Continental commissioned an independent and reputable pollster, Tarrance, Hill, Newport & Ryan, who surveyed 1,000 adult travelers, ranging from weekly, monthly, quarterly, to annual flyers. The confidence interval of the poll is such that 95 percent of the time results will be within plus or minus three percent of true value when true value equals the results that would be reached if it were possible to interview each airline passenger. We would like to share the results of this poll—taken just April 14-16—with the members of the subcommittee.

First, I would note that the poll asked participants to draw not only upon their own travel experiences, but also upon what they had heard from acquaintances, read in newspapers and magazines, or seen in other media accounts. I would also point out that the questions related to the airline industry as a whole, as opposed to Continental or any other airline.

As an interesting starting point, the survey indicated that there was more overall confidence expressed in the airline industry than in the automobile and health care industries. Likewise, better value was found in the airline industry than in the banking and health care industries. The poll questioned participants on the truthfulness and overall helpfulness of industry advertising, and here, the airline industry prevailed over the banking, automobile and health care industries. (See Table I).

Sixty-five percent disagreed or disagreed strongly with the notion that the airline industry does a poor job of communicating with the American public. Let us just turn our attention to more airline specific questions posed in the survey. Forty-two percent felt that fares were better today than one year ago, and 50 percent felt they were better than five years ago. Only 15 and 25 percent, respectively, thought fares were worse. When asked if the attitudes of airline employees—airport personnel and on-board flight attendants—were better, about the same or worse than one year ago, respondents answered "about the same" 67 percent of the time. As compared to five years ago, the percentage was 48 percent. Only 18 and 27 percent, respectively, thought it was worse.

Rating baggage service found similar responses. Sixty-two percent thought it was about the same as a year ago, and 48 percent thought it was about the same as five years ago. Questions about on-time performance illicited about the response we suspected. Forth-three percent thought it was worse than one year ago and 48 percent thought it was worse than five years ago.

Respondents were also asked to address truth in airline advertising. Fifty-two percent thought it was about the same as one year ago, and 39 percent thought it was about the same as five years ago. Only 29 and 31 percent, respectively, thought it was worse.

When asked to rate overall airline industry performance, 48 percent thought it was good, 40 percent thought it was fair, and only 12 percent found it to be poor. Finally, when given the choice to go back to regulated schedules and fares like ten years ago versus leaving things as they are today, 65 percent preferred that things be left as they are.

This data suggests that this newfound interest in consumer disclosure may not be as prevalent or desired as one would be led to believe in light of the intense interest being visited upon this issue today in this forum, or in other forums. Again we raise the question—what and how much do consumers want to know?

These statistics and Continental's own experience suggest that while there are definite areas for improvement, and there is a need for expeditious change, there is no need for emergency measures that are not well-tested. Care must be taken to avoid designing a remedy that kills the patient. Continental's DOT petition is just

such an attempt to improve the workings of the air transportation market, but in ways that improve rather than derogate the lot of the consumer.

One of the tenets of Continental's Petition is that there must be industry-wide data. Continental believes that without access to performance information on all other carriers in the business, a particular carrier cannot substantiate comparative claims concerning performance. Further, consumers will be only further confused unless generally accepted methods are derived for measuring relevant performance attributes. Without uniform criteria and universal disclosure, consumers would be unable to make meaningful comparisons as they sort out the choices available. And to be meaningful, the information must also be timely, reliable an systematic.

At present, this type of information does not exist. Instead, consumers receive vague implications in advertising of superior performances created by depictions of cordial flight attendants, composed pilots and well-attended passengers. Misconceptions created by these implied comparisons, as well as more specific claims about service performance and fare availability, can best be corrected, in our view, by the disclosures we have recommended. Not only will this approach promote more vigorous competition based on reliable and truthful information about service quality, it will also shed objective light on the scope of airline service problems. Indeed, the forces of competition itself will aid in solving the problem highlighted by complaints and anecdotes of eroded public confidence.

We gave much thought to several proposals that have been introduced in Congress before desiging the package forming the basis of our DOT petition. Most proposals attempt to maximize a consumer's tools to choose between carriers by requiring on-time performance data and other information on a per flight basis. We believe the relevant issue is not individual flights but rather hub activity.

Suppose a traveler wants to fly from San Jose, California, to Washington, D.C., either National, Dulles, or Baltimore. Based upon the April 1 Official Airline Guide, six carriers provide this service. Three flights are direct from San Jose to Washington, with either one stop (through Chicago or Salt Lake City) or three (through San Francisco, St. Louis and Columbus, Ohio). Hopefully, both baggage and people remain with the airplane. Otherwise, a traveler has more or less 23 published connections, requiring both airplane changes and movement of baggage. Through which hubs must a traveler fly—Denver, St. Louis, Salt Lake City, Chicago-O'Hare, San Francisco, or Los Angeles. We submit that more relevant information in terms of odds of on-time arrival, with bags, is not a function of which of these 23 flights are chosen but rather what the hub activity will be on a particular day.

Taking into consideration our premise that hub competition provides more relevant information to consumers, Continental proposes that all carriers be required to disclose on a specified form the percentage of late departures from its hubs and on its system as a whole on a monthly basis. A late departure would be defined as one that leaves the blocks more than 15 minutes behind schedule. A hub would be defined as any airport from which the carrier has 75 or more departures per day. This proposal to measure on-time performance by disclosing late departures is based on the fact that delays occurring after an airplane has left the gate are almost always beyond the control of the carrier. In designing schedules, carriers have three major variables with which they must contend—(1) the time required to prepare a plane and push it off the gate; (2) the time to operate a particular type of equipment to its destination; and (3) the time consumed waiting for air traffic control clearances, either to take off or land.

The carrier and its employees have almost total control of the first variable. The second variable—point-to-point flight time—appears, on the surface, to be predictable based upon mileage and equipment type, however, that too may become unpredictable since air traffic control may require delays during flight to control limited airspace and landings. The final variable is not only unpredictable, but outside the carrier's control entirely. An airplane lands when ATC says it can land.

Let us take one of the legislative proposals currently before Congress to illustrate the result that would be achieved if enacted. One of the proposals requires verbal disclosure, by the reservations agent at the time of taking a reservation, the percentage of time the service was delayed beyond its scheduled arrival time for the most recent 30-day period as well as the length of such delays. If in our San Jose to Washington example, a traveler sought arrival, departure, and delay percentages for all 26 flights, calls to all six carriers as to each flight would be necessary. Imagine how long response time would be in reaching reservations. Consider the talk-time costs that would be added to the normal reservations process. Response time would be delayed considerably. Continental submits that this is not the answer.

We also propose that carriers be required to disclose their systemwide performance with respect to answering telephones to take reservations. One of the consum-

er's frustrations is telephone answering time. Since all carriers tend to match each other's fares, the consumer would, if he or she knew, tend to call the most responsive. Therefore, we believe that data indicating the percentage of calls answered within 20 seconds or less, as well as the average number of seconds taken to answer all calls, would be especially useful.

To have meaningful information about flight cancellations, Continental proposes that each carrier disclose flight completion factors by hub and by system. This would be measured as a ratio of available seat miles actually flown and those scheduled for that day. Useful information would thus be provided about flight completions.

The fourth part of our package deals with baggage handling. Earlier I mentioned the potential for baggage mishandling in the San Jose to Washington trip. Already we know the number of passenger notification reports of lost or delayed baggage, and the number of our own enplanements. If the airlines are directed to collect and publish the number of customers whose baggage is properly handled per 1,000 passengers enplaned, this would aid in the customer's decision-making process.

Finally, with the advent of price differentiation, the availability of discount fares has taken on considerable importance. It has been allegd that some discount fare promotions are little more than "bait and switch" schemes. These allegations have arisen as consumers have responded to advertisements only to be told that no seats are available at the discount fares and then being invited to purchase at higher or full fares.

Continental proposes that carriers be required to disclose anticipated demand levels for special fares. We used this approach in selected cities at one point during the first round of Max$avers. In Monday's announcement we committed to using this approach again. In such an instance, consumers would be told whether expected demand on particular routes is low, moderate or high. For example, if demand is high, consumers should be cautioned that reservations and ticket purchases should be made as far in advance as possible. A copy of one of our ads is attached.

We would note that this approach is a delicate balance between providing useful information to consumers to detect bait-and-switch type practices and requiring disclosures that would inhibit beneficial discount fare competition. It does not call for segment-by-segment or fare-type-by-fare-type data. The production of such information would be unduly burdensome, extremely voluminous, and basically unintelligible. For example, attached to by testimony is a mock advertisement illustrating what it would take to comply with legislative proposals regarding fare availability. Continental has seven fare buckets—ranging from regular fares to our 2-day advance purchase Max$aver. The advertisement—just to provide a consumer with fare availability from New York City—would take 50 pages. At a rate of $33,279 per page in the New York Times, that amounts to $1.66 million.

Besides that, I am not sure the potential travelers will want to spend the time necessary to sort out the options. Further, the information shown—by the time it is printed—is out of date. Continental believes that the demand approach contained in the advertisement run in the Chicago Tribune last March, which is typical of advertisements we have run in other major markets, provides the consumer with more meaningful and useful information.

Take the vacation traveler whose destination is generally flexible. After reviewing the demand level for various destinations, the opportunities of getting low fares in the spring to Albuquerque, for instance, are far greater than travel to Denver in the middle of January. We submit that this approach truly provides a service to potential travelers in terms of fare availability.

Continental believes that this type of information is necessary to improve service competition in the airline industry. Consumers do not currently have the information they need to make meaningful choices. By taking this approach, we believe that growing consumer concerns will be addressed by improving the operation of the market.

Senator FORD. Thank you very much.

Mr. Dullum.

Mr. DULLUM. Mr. Chairman and Members of the Subcommittee, Delta appreciates this opportunity to provide the Subcommittee with its views on pending legislative proposals, to provide airline consumers with more notice and disclosure about airline services and performance.

I have submitted a more complete statement and would ask that it be included in the record.

Senator FORD. Mr. Dullum, it will be included in the record in full.

Mr. DULLUM. Thank you, sir.

Delta is deeply concerned about growing criticism and complaints about airline services. It is Delta's belief that the current DOT consumer protection regulations may need refinement in order to make available to customers more information about airline services and performance. Delta strongly believes that the marketplace is the best regulator of not only the price but the quality and variety of airline service. We strongly oppose vesting power in the hands of government regulators to make judgments that define acceptable standards for airline services.

Unlike some airlines, Delta does not believe that price is the only means of competing in a deregulated industry. In our judgment, the quality of airline service is as important as the cost of the service. Delta takes great pride in the fact that since 1974 we have had the fewest number of consumer complaints filed with the CAB and the DOT of all of the major airlines. We believe this record demonstrates that Delta's continuing commitment to customer satisfaction has not deteriorated since the enactment of the Airline Deregulation Act.

There is justifiable concern and criticism about the industry's on-time performance and schedule reliability. Delta is always looking for ways to refine and adjust its schedules to reduce delays and improve on-time performance. There are strong consumer and economic incentives for us to operate realistic and reliable schedules.

I must point out that airlines have little control over the major factors which cause delays, the primary causes being the weather and air traffic control procedures. Delta totally rejects the administration's assertion that airline scheduling practices at congested airports is a major cause of delays. Let me present some facts concerning Delta's largest hub, Atlanta, to demonstrate that airline scheduling is a minor factor in causing delays.

Delta and Eastern met in late 1984 under antitrust immunity granted by the DOT to adjust our schedules to avoid overscheduling during peak periods. This agreement was accepted and approved by the FAA, and Delta restructured its entire hub and spoke complexes throughout the day in an effort to smooth operations during peak periods.

Despite this adjustment, delays in Atlanta increased 8 percent in 1986 over 1985 but ATC ground delays or holds rose from 820 in November of 1985 to 2,505 in December of 1986. Delta increased its schedules by only 33 flights and spread its operations throughout the day. We think these statistics clearly demonstrate that Delta's scheduling practices had little impact on or was a significant cause for the increase in delays experienced in Atlanta during the past 12-month period.

A carrier's on-time performance is not a meaningful indicator of service quality because of the airline's inability to control those major factors which cause delays. However, and being inconsistent with deregulation, Delta would not object to the collection of on-time performance data on a quarterly basis by DOT, provided that

all airlines uniformly report this data and the delay is classified according to the specific cause.

Mr. Chairman, the Subcommittee can be assured that Delta Airlines does not engage in the practice of cancelling flights because of low load factors. To do so would be highly disruptive to our complex scheduling of aircraft and flight crews. Delta has consistently maintained an operating completion factor of over 99 percent of all flights we schedule to operate.

Delta believes that all airlines could provide data to DOT for dissemination to the public concerning the number of lost or misrouted bags. This information would be useful to consumers in selecting flights between competing airlines, and the airlines could use this information in its advertising for comparative purposes.

Similarly, Delta would also not object to providing data to DOT on the number of passengers with confirmed reservations that are involuntarily denied boarding on their particular flight. We do believe, however, that DOT's current regulations which protect the rights of passengers involving overbooking and denied boarding is adequate.

Finally, Delta believes it is inappropriate for the Federal Government to dictate specific terms that must be disclosed or contained in an airline's advertising of its product. The most objectionable suggestion that has been advanced under the guise of consumer protection is a requirement that airlines offer a minimum number of seats at an advertised fare and/or disclose the number of seats made available at an advertised price.

This proposal constitutes regulation of airline fares and schedules, because it eliminates a carrier's discretion to sell its product in the marketplace based upon changing demand for services by the customer. Our customers are informed of the specific conditions and limitations applicable to our fares at the time a reservation is made.

Mr. Chairman and Members of the Subcommittee, Delta hopes that its comments will be useful in your deliberation on these very important issues. I would be pleased to respond to questions.

Thank you, sir.

[The statement follows:]

STATEMENT OF MURPH DULLUM, VICE PRESIDENT-GOVERNMENT AFFAIRS, DELTA AIR LINES, INC

Mr. Chairman and Members of the Subcommittee, I am Murph Dullum, Vice President-Government Affairs for Delta Air Lines, Inc. Delta appreciates this opportunity to provide the Subcommittee its views on S. 724 and a variety of other airline economic, regulatory and service issues. As you have requested, our testimony will concentrate on pending legislative proposals to provide airline consumers with more notice and disclosure about airlines services and performance.

Before providing Delta's views on the need for legislation to mandate greater public notice and disclosure to airline passengers concerning performance in a number of service areas, I would like to comment briefly on other issues which are the subject of today's hearing. Delta generally supports the position expressed by the Air Transport Association concerning the early sunsent of Sections 408, 409, 412 and 414 of the Federal Aviation Act. We also support the industry position opposing a statutory imposition of labor protection provisions in airline mergers and acquisitions.

I. THE CONSUMERS RIGHT TO MORE INFORMATION DOES NOT WARRANT EXPANSION OF FEDERAL GOVERNMENT REGULATORY CONTROLS OVER AIRLINE PRACTICES

Delta is deeply concerned about growing criticism that airline services are deteriorating and that our customers should receive more information about the services we provide. We do not believe, however, that the legislative proposals that have been advanced to significantly broaden the Federal Government's regulatory powers over the airline industry would be the correct solution. Indeed, they would be inappropriate for a deregulated industry. As set forth in the policy statement of the Airline Deregulation Act of 1978, competitive market forces should determine ". . . the variety, quality and price of air transportation services." We wonder why those airline practices which do not affect safety should be subject to a special body of consumer legislation regulations that is not similarly imposed on other deregulated industries.

The recent increases in passenger enplanements and available seat miles relate to the number of complaints filed with the Department of Transportation suggesting that the restructuring which is taking place in the industry has produced some dissatisfaction with the traveling public. The central issue for the Subcommittee to consider is whether the existing regulatory authority that the Department of Transportation inherited from the CAB under Sections 404(a) and 411 of the Federal Aviation Act is adequate to protect a consumer's rights. Given the sharp rise in complaints and concerns expressed by Members of Congress about airlines services, it is appropriate to examine whether DOT's authority should be expanded, and whether it is being properly exercised.

Both the Airline Deregulation Act of 1978 and the subsequent CAB Sunset Act of 1984 retained certain consumer protection rules and Federal Government authority to regulate such areas as smoking on board aircraft, denied boarding compensation and baggage liability. In addition, the CAB recognized early that there was a need for a system whereby consumer information could be made available to the traveling public. A system was designed and subsequently adopted by the DOT that requires airlines to provide notice on every passenger's ticket of certain rules contained in the contract and disclosure that a summary of these rules is available upon demand at ticketing locations. The consumer does, therefore, currently have access to the basic rules and conditions governing an airline's carriage and the carrier's obligation to the passenger. In our judgment, existing regulations are adequate in protecting the customer and providing full disclosure of the passenger's rights. At issue today is whether more information about an airline's performance should be disclosed and made available to consumers.

It is Delta's belief that the current DOT regulations may need refinement in order to make available to consumers more information in making their choice about airline services. Any requirement to mandate greater disclosure and notice about a carrier's service performance should avoid an expansion of direct legislative or regulatory control over the airline operation. Once this information is available to the traveling public, the marketplace will adequately regulate airline practices and performance. We strongly oppose vesting power in the hands of Federal Government regulators to make judgments that define "acceptable standards" for airlines services.

Delta cannot support legislative proposals that mandate by statute or subsequent regulation that airlines automatically disclose at time of sale or purchase performance indicators or standards. Such requirements would impose enormous costs on the industry to collect, process and disclose this information to the consumer at the time the reservation is made or a ticket purchased. The ultimate cost of such a regulatory or statutory requirement would be borne by the consumer in the cost of transportation. Our experience demonstrates, quite frankly, that most customers are not desirous of this information. We urge the Subcommittee to reject legislative proposals that enpower the government to define quality of airline service for consumers.

II SERVICE QUALITY IS A MAJOR ELEMENT OF AIRLINE COMPETITION AND DELTA'S RECORD IS CLEARLY SUPERIOR IN THIS AREA

Delta's highest corporate policy places a premium on the long term good will and support of our loyal customers. Our basic corporate philosophy, "The Customer Is Always Right", is emphasized to our employees continually both in initial and recurrent training. Delta's 50,000 professionals are dedicated to providing our customers with the highest quality of passenger service and comfort.

Unlike some airlines, Delta does not believe that price is the only means of competing in a deregulated industry. In our judgment, the quality of airline service is as important as the cost of the service.

Despite enormous pressures to reduce costs to compete in our highly competitive industry, Delta has attempted to reduce costs without cutting back expenditures in any manner that would compromise our commitment to provide the highest level of customer service and safety.

Delta takes great pride in the fact that since 1974, we have had the fewest number of complaints filed with the CAB and DOT of all the major airlines. We believe this record demonstrates that Delta's commitment to customer satisfaction has not deteriorated since the enactment of the Airline Deregulations Act of 1978. Of particular note, the DOT 1987 first quarter Consumer Complaint Report substantiates by month our position as the major airline with the least number of passenger complaints.

While some of our competitors have recently suggested that the current DOT consumer complaint reporting system is a poor indicator to compare the quality of airline services, we believe that DOT's report has been useful in identifying the specific nature of customer problems and carrier performance under various service criteria.

We believe the quality of an airline's service and its record of customer satisfaction are important competitive tools in our industry. Consumers do make choices about airlines based upon their own experiences and judgments concerning an airline's service. In all of our sales and marketing efforts, we emphasize service quality and a high level of customer satisfaction.

III. DISCUSSIONS ON PROPOSALS TO REQUIRE ADDITIONAL CONSUMER NOTICE AND DISCLOSURE ABOUT AIRLINE SERVICES

A. *On-time performance/schedule dependability.*—There is justifiable concern and criticism about the industry's on-time performance and schedule dependability. We, too, are disturbed about the rapid rise in delays which Delta and other airlines are experiencing. Delta is always looking for ways to refine and adjust its schedules to reduce delays and improve on-time performance. There are strong consumer and economic incentives for us to operate realistic and reliable schedules.

We agree with complaints expressed by many Members of Congress that airline delays have resulted in a deterioration of airline service. However, we must point out that airlines have little control over the major factors which cause delays. The primary causes of delays are weather, and air traffic control procedures. Quite frankly, this Administration has failed to adequately rebuild the air traffic control system since the PATCO strike in 1981. The Administration has also failed to utilize resources available from the Aviation Trust Fund to expand system capacity in order to insure that the aviation infrastructure can meet increased demand for air services resulting from deregulation.

We are especially troubled that the current staffing level target of 15,000 controllers at the end of Fiscal Year 1987 is inadequate and that the National Air Space System Plan continues to lag behind the schedule established in 1981 to modernize the air traffic control system. The simple truth is that our government has not provided the industry with an infrastructure necessary to meet the rapid growth that has occurred under deregulation.

Delta totally rejects the Administration's assertion that airline scheduling practices at major airports is a major cause of delays. We do recognize, however, that overscheduling or "bunching" of flights during peak hour periods at certain airports is a contributing factor. Delta did participate in 1984 and again this year in adjusting our schedules at certain congested airports pursuant to a DOT grant of antitrust immunity for the airlines to meet and discuss their schedules.

Since Delta's largest hub at Atlanta Hartsfield International Airport has been the subject of considerable attention in connection with the delay problem both in 1984 and recently, we would like to present some facts that demonstrate that airline scheduling at this airport is not a major cause of delays. Delta and Eastern met in late 1984 under antitrust immunity to adjust our schedules to avoid overscheduling during peak periods. The agreement was accepted and approved by the FAA. For its part, Delta restructured in October, 1984 its entire hub and spoke complexes throughout the day in an effort to smooth operations during peak periods. In 1985, 755,426 operations in Atlanta resulted in 45,638 delays. However, delays in 1986 versus 1985 increased 4% to a total of 51,348. During this time period Delta's Atlanta operations did not increase significantly. We increased our operations by only 33 flights per day, and these were spread throughout the day. The level of operations for all carriers in Atlanta increased only 6% in 1986. Air traffic control imposed

ground delays, "ground holds" (created by weather, FAA's ATC procedures and problems at other airports), rose from 820 in December, 1985 to a level of 2,505 in November, 1986 at Atlanta. These statistics clearly demonstrate that Delta's scheduling practices at our Atlanta hub had little impact on or was the significant cause for the increase in delays.

Delta does not believe that a carrier's on-time performance is a meaningful indicator of service quality because of the airlines inability to control those major factors which are the primary causes of delays. However, Delta would not object to the collection of on-time performance data by the Department of Transportation, preferably quarterly and in any event uniformly, from all airlines providing that the delay was classified according to specific cause, i.e. weather, ATC, flow control, et al. This information could be disseminated by DOT on a quarterly basis for airline consumers and other interested parties. Delta could not, however, support legislative or regulatory proposals that would attempt to require disclosure of the data directly to the customer at the time of sale or reservation. We believe that a centralized repository for this information would be a much more cost efficient means of providing on-time performance and other information to those customers that desire this data.

There have been a number of complaints and suggestions that certain airlines cancel flights for economic reasons. The Subcommittee can be assured that Delta Air Lines does not engage in the practice of cancelling flights because of low load factors. To do so would be very disruptive to our highly complex scheduling of aircraft and flight crews. Delta has consistently maintained an operating reliability percentage of over 99% on all flights we schedule to operate.

Delta believes that industry on-time performance could be improved if DOT were to consider revisions to the CRS Rule. At present the algorithms used by most CRS vendors force carriers to alter the timing of their flights to avoid unfavorable positions on CRS screens. For example, the DOT could take action to reduce the use of elapsed time by certain carriers as a weapon in constructing schedules that are displayed in computerized reservation systems. Delta filed a complaint with DOT against American Airlines in June, 1986 complaining that this airline deliberately shortened its flight schedules in a manner to bias displays, and thereby gain a preferential display of its flights in American's SABRE computerized reservations system. Based upon substantial evidence provided to DOT in our complaint, American was using published schedules with shorter elapsed flying time than those actually operated between various city pair markets. In fact, Delta's complaint showed that American had two different schedules—one for publication on the SABRE system and another for its internal operations. This elapsed-time scheme has had an enormous adverse impact on Delta and other American competitors. To date, DOT has not taken action on Delta's complaint. Delta would support changes to the DOT CRS rules to prevent competitors such as American from using elapsed-time penalties in a manner that injures its competitors.

B. *Baggage delivery performance.*—Another measure of an airline's service is its ability to deliver checked baggage to the proper destination in an expeditous manner. Various legislative proposals introduced recently would require airlines to disclose and/or report the number of lost or misrouted baggage. Delta believes that all airlines could provide to DOT for dissemination to the public data concerning the number of lost or misrouted baggage. We believe this information could be useful to consumers in selecting flights between competing carriers and the airlines could use this information in its advertising for comparative purposes. We do agree that an airline's record in this area is an important indicator of service performance.

C. *Oversales denied boarding compensation.*—The Department of Transportation currently has regulations which govern the rights of airline passengers in cases involving overbooking and denied boarding. The specific rights of the customer are detailed in rules tariffs available upon demand at airline ticket counters. The specific amenities provided by individual carriers are also available at ticket counters upon request whenever a customer's trip is interrupted. Delta believes the current system for disclosing this information and protecting the customer's rights is adequate. It would be extremely impractical and costly to provide the extensive rules and conditions contained in these tariffs to the customers as part of the ticket. Accordingly, Delta could not support additional data disclosure to the passenger at the time of reservation or ticket sale.

Delta would not object however, to providing data to DOT for disclosure to the public on the number of passengers with confirmed reservations that are involuntarily denied boarding on their particular flight.

D. *Advertising.*—Delta believes that it is inappropriate for the Federal Government to dictate specific terms that must be disclosed or contained in an airline's advertising of its product. The Department of Transportation currently has regula-

tory authority under section 411 to address any specific problems or abuses which might occur to the detriment of the consumer. Airline advertising is also regulated by some states and local governments.

If the DOT retains Section 411 authority, then Delta strongly opposes the suggestion that Section 5 of the Federal Trade Commission Act be amended to permit the FTC to regulate airline advertising practices. Splitting jurisdiction over airline advertising would create an unnecessary and unfair hardship on the industry without any clear benefit to the consumer.

The most objectionable suggestion that has been advanced under the guise of consumer protection is a requirement that airlines offer a minimum number of seats at advertised fares and/or disclose the number of seats made available at an advertised price. This proposal, in our judgment, constitutes regulation of airline fares and schedules because it would eliminate a carrier's discretion to sell its product in the marketplace based upon consumer demand. If implemented, these suggestions would probably harm the consumer because airlines would be more reluctant to advertise price because of the arbitrary constraints placed upon the advertising of its services. Delta's advertisements clearly spell out that seats are limited at certain price levels and that specific conditions and limitations apply in the purchase of a seat at an advertised price.

Mr. Chairman and Members of the Subcommittee, Delta hopes that its comments will be useful in your deliberation on these very important issues. We stand ready to assist the Subcommittee in the development of legislation that enables the public to make more informed decisions about the airline services available in the marketplace.

Senator FORD. Thank you very much, Mr. Dullum.

Senator Exon has a very important meeting that he must attend; therefore, I will yield my time in the beginning to him, and I will go last as it relates to the questions.

Senator Exon.

Senator EXON. Thank you very much, Mr. Chairman. I appreciate your consideration.

Gentlemen, let me ask a question of all of you, the airline executives here. Do any of you cancel scheduled flights because of a lack of sufficient load factor?

Mr. CRANDALL. No, sir.

Mr. PLASKETT. No, sir.

Mr. DULLUM. No, sir.

Mr. CRANDALL. If I could expand on that for a moment.

Senator EXON. I sure hope you can, because I keep hearing, and it may not be you, but do any of your competitors, to your knowledge?

Mr. CRANDALL. Senator, I really think it best if that question is to be addressed explicitly to all the carriers in the industry. I think there is some who might, but I am not prepared to say who they are.

The reality is that in the case of any cancellation of a flight on our part, we bear almost all the expenses, and in some cases cancelling a flight increases our costs as opposed to decreasing them.

Now, the reason is that the only cost avoided by cancelling a flight is essentially the fuel cost. The added costs are those that go with the reassignment of the crew, the costs that go with the subsequent need to position an airplane to fulfill the service obligation that the airplane which did not fly would otherwise have fulfilled; overtime, for example, for ground crews which comes from our schedule operations.

I can assure you that our objective every day of every year is to operate 100 percent of our airplanes. I can also assure you that

once an airplane is in the schedule, we will operate it, whatever its load factor, if we can.

Mr. PLASKETT. Senator, if I could expand on that. I mentioned that perhaps what we have here is a perception problem. The policy of Continental Airlines is to cancel flights where we will inconvenience the least number of passengers when a cancellation is necessary.

So what may happen is that an aircraft may have a mechanical problem and may have 150 people on that airplane ready to go. In order to inconvenience the least number of passengers, our dispatch people will look for another aircraft, since there probably are no spare aircraft available to substitute for the mechanical, and will find a flight with fewer passengers. If it works out in aircraft routing, they may cancel that flight, and in that case it is an economic decision but it is based on a policy of inconveniencing the least number of customers.

Senator EXON. Well, let me ask this question then as a follow-up question. Let us assume that you have an airplane scheduled to leave at 4:30 p.m. from one point to another, and you have another flight scheduled an hour and a half later at 6:00 p.m. from the same place to the same place. Let us assume that you have half a load taking off on that 4:30 flight, and you have half a load at the 6:00 flight. Are you saying, then, it is never the policy of the airline to cancel the 4:30 flight and put everybody on the 6:00 flight?

Mr. CRANDALL. That is correct.

Mr. PLASKETT. That is the policy.

Mr. CRANDALL. That is really an economic choice—let us hypothesize, if we can, that the 4:30 airplane is going from some point to a hub. Once it gets to the hub it is going to accept passengers from many other locations and go on to some other point. Having gotten to that point, it is going to return to still another of our hubs later in the day. The same thing is true of the 6:30 airplane.

So that cancelling an airplane on the 4:30 segment in order to put the load on the 6:30 segment now gives us a whole series of downline——

Senator EXON. It was 6:00, not 6:30. I know it will not leave until 6:30, but it was scheduled to leave at 6:00.

Mr. CRANDALL. In any case, the downline consequences of that, Senator, simply make it an uneconomic choice. It would be perhaps an unethical choice in any case, but it is not in any case economic to do that.

Senator EXON. Well, gentlemen, I believe very seriously we can understand the difficulties in airplanes. I do not think anyone wants to go up in an airplane, and certainly you do not want to put it up in the air, if there is something wrong with it. That is safety, which has to be number one.

My next question has to do with frequent flyer programs. You have all kinds of names for it, but you all have it to entice people that fly regularly on your airline. I see nothing wrong with that.

Are any of you retroactively changing the rules with your frequent flyer programs?

Mr. PLASKETT. With respect to Continental, Senator, we have not made any changes to the program except to add additional features that would make the program more attractive to customers.

Senator EXON. You have not cut out anything?

Mr. PLASKETT. No, sir.

Mr. CRANDALL. The answer, Senator, is that about three or four weeks ago we did, in fact. We added some things; that is, we put some things into the program that you could not get before. We also redefined, in effect repriced, some of the products that you could get before.

Senator EXON. I am not worried if you are giving more.

Mr. CRANDALL. I understand, but the answer to the second half of your question is that we did, in fact, redefine some of the requirements for awards. It has since been suggested by a great many of our frequent travelers—and you have referred to it here in this hearing and there have been some press reports as well—that what we did may be regarded as retroactive pricing.

On reflection we agree with that view. A letter will go to all of our frequent travelers this week, in which we will make a commitment that while we feel free to redefine the program for awards made prospectively, that is for miles not yet earned, that the previous award structure will be put back in place, and we will make a long-term commitment to our customers that we will not in fact redefine retroactively the award structure.

Senator EXON. So you have changed your procedures?

Mr. CRANDALL. Well, effectively we have changed our minds.

Senator EXON. Wonderful.

Mr. CRANDALL. To be candid with you, Senator, we really never saw it as a matter of breaking faith with anybody. It has been defined in that way. That is not the way we want to be perceived, and we are going to go back and take a different position.

Senator EXON. Mr. Dullum.

Mr. DULLUM. Delta has not recently changed its mileage quotations and certainly not in a manner where it was retroactive.

Senator EXON. Gentlemen, my last question has to do with the ever-present problem and safety danger over overscheduling. I recognize you are in a competitive area now, and I recognize that this Senator wants to fly out of Washington, D.C. to home on Friday afternoon as late as possible; therefore, I am very upset when I do not have a 5:30 or 6:30 flight, a convenient time that I can get out of here. I only say that because I recognize I am part of the problem.

Do you agree that there are too many flights scheduled out on peak hours. That is, there is no way to meet those schedules under normal traveling conditions, normal weather conditions? Do you agree that packing scheduled flights for leaving and arriving in peak hours is a problem that has not been honestly addressed by either the traveling public or the airline?

Mr. CRANDALL. Yes. In my testimony, Senator, I indicate that in my opinion two things should be done. First, we should build the largest, most capable air traffic control system that money can buy, and I think we should stop the game of constantly denying the FAA the resources that it needs.

Even if we do that, the inexorable growth of the airline industry means that a perfectly competitive world such as we live in is going to generate competitive demands for the primary time slot.

I am very attracted to the idea that Senator Kassebaum raised of differentially pricing the right to operate at different times, and I believe we should do two things: find some market-driven way of allocating operating capacity; and at the same time, in order to limit our need to do so, build the biggest and most capable air traffic system we can.

Yes, there are sometimes more flights than can be handled at one time—but I do not believe it is a safety issue because the FAA does a very good job of keeping actual levels of operations within an envelope of safety. The fact is that economic and competitive considerations sometimes do create nearly irresistible competitive pressures.

The only way to solve that problem that I know of is to somehow allocate capacity, and find a marketplace mechanism that will enable you to do it.

Senator EXON. Mr. Crandall, would you concede that there are so many flights leaving at certain peak hours that there is no way that there is no choice for those to leave on time?

Mr. CRANDALL. Yes, sir.

Senator EXON. That is the worst safety factor. I am glad that the FAA controllers do not let those airplanes off the ground, but again that is an overscheduling problem.

Mr. CRANDALL. So are we, Senator, and that is what I am saying. I do not believe it is a safety problem. I do believe——

Senator EXON. It is a safety problem if you are telling me I am going to leave at 5:00 and I do not leave until 5:45 or 6:00 or 6:15.

Mr. CRANDALL. That certainly is a service problem, but since the FAA does control the level of actual operations, I do not think we have a safety problem. We have a service problem, and I believe, as I say, that the solution to that is, first, to increase the capacity of the ATC system as much as we can and, secondly, use some sort of market-driven allocation system to make sure that we do not schedule more than can be operated at any point in time.

Senator EXON. I would just like briefly, Mr. Chairman, to ask Mr. Plaskett and Mr. Dullum, is your answer the same as that given by Mr. Crandall?

Mr. PLASKETT. Senator, essentially that is correct. We believe that the highest priority must be placed on creating additional capacity in the air traffic control system rather than returning to deep and, we think, cost ineffective regulation.

Creating that capacity, however, will not take place overnight. There will be a time period when the industry has increasing demands and the capacity will not be there. We agree, and we think that we should sit down in some forum and seek out a market-based solution. It is the best of several bad alternatives in the near term.

Senator EXON. Do you also plead guilty, Mr. Dullum?

Mr. DULLUM. The same way, sir.

Senator EXON. Thank you.

Thank you, Mr. Chairman.

Senator FORD. I have some problem with overbooking because you wind up sitting on the ramp. You sit there so long. Two hours out here at Washington National is just too long to sit out there,

particularly when the pilot's time runs out. You have to go back in and change crews.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Chairman, with your permission I would like to read a statement that Senator Danforth left with me because he had to leave. As you know, he has had a continuing interest in this issue and has also proposed legislation. So with your indulgence, I would like to read it.

Senator FORD. The Senator may proceed.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator Danforth notes "with great interest and with great pleasure that all of the airline representatives today have made exactly the same point, that consumers need to have more information available to them if they are able to make informed choices about quality of service. Delays, cancellations and lost baggage are frustrating experiences.

I sense that there is a desire to work with this Committee to improve operations. I have made a proposal regarding delay reportings. Senator Metzenbaum has a proposal. Senator Lautenberg has a proposal, and Senator Ford, as Chairman of the Subcommittee, has sat through five days of hearings in an effort to find the right solution.

I, for one, am not wedded to any particular approach but am pleased by the cooperative attitude I have seen today. The question is will you work with this Committee, will you give us your best ideas as to how we can improve the information available to consumers so the competition will not be based just on price but on efficiency, dependability and performance as well?"

I hope Senator Danforth's statement is taken to heart here, because I think he has enormous influence on the process, and he is one who has certainly committed a great deal of his energies to helping the Chairman to resolve this issue.

I would like, Mr. Chairman, to go back to the issue of airport delays. I understand Mr. Crandall's response, and perhaps Mr. Plaskett's and Mr. Dullum's, that over time market forces will cure much of this problem, and perhaps there should be consideration of Senator Kassebaum's idea about differential pricing for certain peak hours.

We have a short-term problem here, gentlemen, and it is a very severe short-term problem. Mr. Dullum has stated that he does not feel, that bunching of flights during peak hours is a significant factor.

I totally disagree with that, Mr. Dullum, because you cannot have 70 flights landing or taking off in an hour with only capacity for a half or a third of that. That is the case in major airports across America today. That has nothing to do with weather, and that has nothing to do with ticket pricing. It has to do with physical capability.

I also agree with the witnesses that an increase both in airport capacity and in the ATC system is a long-term answer, but in the short term we have a serious problem here. It is my understanding, and I would like to ask Mr. Scocozza about this—sorry for the mispronunciation, sir.

Senator FORD. Call him Matt. It is easier.

Senator MCCAIN. Matt, if I could ask you, have the airlines been willing to sit down and negotiate this enormous overbooking situation we have at peak hours in major airports across this country? If so, what more needs to be done, because it is clear, I think, to those of us who are the passengers, that there has not been any relief of this enormously inconveniencing problem.

Go ahead, please.

Mr. SCOCOZZA. Senator, as you and the other panel members have talked about, capacity improvements need to be expected, and my own testimony indicates that we have to do that; but we are talking about years to realize the improvements from that.

Of course, if you are talking about one of the major airport centers in the country—in the world—New York City, airport expansion is either going to be in the Atlantic Ocean, on top of Atlantic-Richfield's refinery, or on the New Jersey Turnpike. So we have to make better use of our existing resources, in addition to improving resources where we can build.

We have tried voluntary discussions with carriers on two separate occasions, and Mr. Crandall spoke of that earlier. A number of carriers together, cumulatively, put about 1,300 changes in the national system. It has been very positive, but some very serious problems still exist. At Newark, between the hours of 8:00 and 9:00 a.m., one of the busiest times of the day, scheduled flights exceed take-off and landing capacity by 160 percent.

Now, as was mentioned earlier, the FAA will not allow any plane to take off or land if it does not meet the performance standards of the airport. What it does mean is that passengers sit at the gate and stew, or they sit on the runway and wonder why there is an air traffic control problem. It is not an air traffic control problem. It is a scheduling problem to a large extent.

I do not ever want to say that we do not need to do some more work on air traffic control. We need to. We need to improve the system, and we need to continue to improve the procedures in all the major centers, as we have done in Newark.

In San Francisco, as I have mentioned, we have been able to improve our procedures to reduce delays there by better than 50 percent; but Senator and other members of the panel, we have found situations where carriers have had a history of 100 percent delays on certain flights. Over a long period of time that suggests one of two things: that they are not watching their operations; or they are scheduling flights that they have no reasonable expectation of meeting.

That, I suggest, Senator, is a prime target for enforcement action. The Secretary announced on April 9 that we do, in fact, intend to enforce our regulations and prosecute carriers for misrepresenting schedules to the public. Piedmont Airlines, while I do not want to single them out, is an example which comes to mind. Piedmont had a problem with delays, and Management looked at their historical problem of delays on certain flights. What Management did was to extend their elapsed time.

Now, that does not necessarily mean that when Matt Scocozza gets on a Piedmont flight that I am not going to sit there for 35 or 40 minutes and stew, but it does mean that I am going to arrive

closer to my target time. At least that resolves a problem. If passengers are delayed sitting in the plane longer than they would choose to be, at least they will arrive when they expect to arrive to make their connection or meet their family or whatever.

So, we are going ahead with enforcement. We are going ahead on air traffic control improvement program, as well as proposing long-term capacity improvements.

Senator McCain. Matt, perhaps you should not be answering this question, but the Department of Transportation has the authority to grant immunity from the antitrust provisions in this instance to allow the airlines to sit down and negotiate these peak hours. True?

Mr. Scocozza. Yes, true.

Senator McCain. Until Mr. Crandall's idea of the market forces takes place, until your solution of the expansion of capacity and capability of the air traffic control system takes place, why will the airlines not sit down in the short term and give relief to passengers during these peak hours when they know full well that there is no possible way, given the capacity of those airports, for flights to take off and land on time.

Mr. Crandall. Senator, if I can respond or try to comment in response to that.

In the first place, I want to remind you again that my company alone has made more than 1,000 schedule changes to become effective in June 1987 at two hubs, Chicago and Dallas-Fort Worth. We have added 33 hours a day to our schedules times. Those are very expensive hours, amounting to the equivalent of three airplanes which we have simply put into the system without any incremental economic return, all in the interest of greater dependability.

So I think the answer to your question is the industry is concerned, individual carriers are concerned, and in the short term we are, I think, collectively and individually willing to do what we can do.

Now, it is important, I think, to keep in mind that the discussions that have been held under the auspices of the Department of Transportation are not in any sense a negotiation. We are not permitted to sit and negotiate with Continental or negotiate with United, you do this, I will do that. What we are talking about here is sort of a blind negotiation, talking through the DOT.

So it is not a matter of whether we are willing to make a series of business deals or engage in transactions which would collectively improve dependability but rather what we are prepared to do more or less unilaterally in the collective interest of the industry.

Now, I would urge you in the strongest terms that if the Committee and if the Congress has a real interest in permanent improvements in on-time dependability of the airline system, you can put in place in a matter of a relatively few months marketplace mechanisms to do so. There is only so much resource. Tell us how much there is, put it out there, and let us buy it and sell it. That is precisely what we do with gates and rental space at facilities. It is not a shocking proposition. It is simply, in effect, the slot system expanded.

In any kind of intermediate term beyond the next three, four, five months, if we want permanent fixes, that is the way to get it, in my opinion.

Realistically, Senator, if you and I each owned an airline and we knew that the best departure time was 8:00 and only one of us could go, neither of us would unilaterally do a disservice to our stockholders by allowing the other to go, voluntarily electing for ourselves some other inferior time.

What we ought to be able to do is bid against one another for the right to operate at 8:00. That is the way the business system works, and that will work in the airline industry if we want better dependability.

Mr. PLASKETT. Senator, we would agree with the approach. Near-term buy/sell seems to be the only alternative that will balance the tradeoff between the economic realities which the customer faces and those which we face. It is the best of several bad alternatives; therefore, it has to be a two-pronged approach.

I would also mention that there are solutions to the problem that take place naturally. It is as bad for us to have an airplane waiting two hours here that is going to Houston connecting with 20 other airplanes going somewhere else. So in the scheduling process, over time, as we look at specific flight experiences, we have to automatically build in sufficient time to allow for the average delay.

It is when an unusual situation occurs, when there is weather and abnormality, that the system gets totally fouled up, and I am not sure that there is anything that we can do to prevent that; but the system does make some modifications. Piedmont's example is a good one, in that as we look at a flight's history we have to make adjustments, because we cannot tolerate a flight being late 100 percent of the time.

Senator MCCAIN. Mr. Dullum, did you want to comment?

Mr. DULLUM. My comments will pretty much echo what the previous two speakers have said.

We are researching as a result of our problems in Atlanta and relooking at our schedules and flights and coming up to respond to the Secretary of DOT with our recommendations to ease this situation.

Mr. SCOCOZZA. Senator, if I could just for one minute apply an historical perspective. In 1978, the year of deregulation, the airlines carried a little bit more than 200 million people. About 30 percent of those tickets were written by travel agents. In 1986 we carried over 414 million people. Close to 80 percent of those tickets were written by travel agents.

What that means is that travel agents have the computers sitting on their tables. Matt Scocozza will call Eastern or Delta and say, "I want the first flight to Chicago." It may not be unusual to find 12 carriers announcing that they are the first flight to Chicago leaving at 8:00 sharp when they have no reasonable expectation of taking off at that time.

Now, there is a strong market incentive to be the first flight. There is also a strong incentive to be the fastest flight. An example that I can recall exists at Newark, where 12 carriers are announcing a takeoff at precisely the same minute. That airport can only

accommodate one carrier more than every minute and a half or two.

In Chicago, there is a situation where two carriers are flying between Chicago and Detroit with the same equipment leaving approximately two or three minutes within each other. One announces it is going to take an hour and four minutes to get to Detroit; the other way says it will take 43 minutes. Well, I suggest to you that something is wrong here. Jets go plus or minus 500 miles an hour.

Computer reservation systems encourage these kinds of market pressures to be applied on the industry.

As these gentlemen indicated this morning, perhaps the market pressure is needed to give them the incentive to move their schedules in other directions because no one is going to voluntarily say, well, I will just give the 8:00 market to Delta, or I will—out of the goodness of my heart—leave at 10:00, or I will leave at 8:10. If you announce an 8:10 departure, you may be 50 lines down the first computer screen.

So this new system that has been developed over the last few years called the computer reservation systems is a very, very important aspect of this whole exercise. There is an investigation going on at the Department into CRS systems and practices and scheduling and pricing.

Senator McCAIN. In fact, Mr. Dullum makes a rather serious charge about your operations, Mr. Crandall, which I would not like to get into at this time.

Mr. CRANDALL. May I add a comment to Mr. Scocozza's commentary?

Senator McCAIN. Sure.

Mr. CRANDALL. The computer is hardly a monster, Senator. Without the computers, we could not have had deregulation.

The practices we are discussing here this morning have been followed throughout the 22 years I have been in this industry. We did exactly the same thing with regard to the first flight out of Newark when we had only the OAG. Long before the days of the computer when the OAG was the source, one of the principal objectives of the senior vice president of marketing in every major airline in the transcontinental markets was to be sure that the departure time shown for your primary flight between New York and Los Angeles was ahead of the of the departure time of the other fellow and that the elapsed time was shorter.

So the computer has not bred this malaise. This is a function of competition in our industry. We ought to harness that competition to do what we want it to do.

Senator McCAIN. Thank you. Mr. Chairman, I know my time has long ago expired. I would just like to comment that I have concern about simply allowing the market to dictate the use these attractive and most desirable time slots because I am afraid of the effect it would have on smaller and newer airlines.

I believe and still hope, although I am not so convinced anymore, that one of the aspects of deregulation was that we would have more airlines rather than less. If we simply adopted Mr. Crandall's proposal, I am worried about the impact on the smaller airlines

that do not have the deepest pockets. I am not sure that is the correct answer.

In the meantime, as we address this we still have millions of passengers who are going to be misled into believing that their flights are going to take off and land at a certain times in major airports across America, and I would strongly urge you again to sit down with the DOT and try and get at least a number of flights scheduled to take off and land within the capacity of those airports. It is not just two or three. I think it is the case of almost every major airport across this country. I think it would contribute enormously to an alleviation of the complaints and problems that you are facing.

Thank you, Mr. Chairman, for your time.

Senator FORD. Senator Kasten.

Senator KASTEN. Thank you. I would like to associate myself with the views expressed by the Senator from Arizona in terms of the importance of helping small growing, developing airlines. One of the discussions that I believe is beginning to take place, although it is not reflected in any of the legislation before us, is the creation of economic disincentives for poor service. The different bills that are before us are all based on disclosing information, and the underlying premise is that if certain information is disclosed to consumers they will then have more information from which they will make their decision and they will start to balance, in Mr. Crandall's words, the quality versus the price.

They know a lot about price, not much about quality. In your comments, Mr. Plaskett, you say that in recent months there has been more and more dissatisfaction with arrival and departure delays, flight cancellations, inability to make telephone reservations. You can't always get through on the telephone, but I think a lot of us are getting into the habit of calling on the phone in the airport rather than standing in line. Going to the pay phone next to the line usually is an easier way to get through to make a reservation if you are looking at that line of 20 or 30 people.

It is just easier to go to the pay phone right there, and I am seeing tons of people doing that. I am sure you are aware also of problems with lost or misdirected baggage and advertised discount fares that are not actually available. These are the problems, and I think there is more and more discussion taking place right now as to why do we not consider some way of making it more costly to the airlines than the delays are already as you have discussed, and also possibly imposing a larger penalty for bumping someone. There is kind of an informal system, I understand, right now.

At certain times there will be a round trip and then a round trip plus $50, and you will get to a round trip plus $100 certain times at those little bartering operations that take place at certain airlines, but the fact is that right now the market driven forces are not driving the airline companies toward a quality operation with regard to delays, cancellations, baggage, et cetera. If the penalties were greater the airlines then would be forced to start to make these changes on their own in the context of market-driven forces.

Now, we have been pushing the FAA and the FAA has started to impose stiffer, stronger penalties for airline safety problems, and I don't know whether the airlines are responding because of that or

in spite of that or whatever. But I would like to draw your attentionto a similar concept which is now being discussed in Congress, although not in this legislation, of requiring the Department of Transportation to impose stronger penalties on airlines for poor performance in terms of problems such as overbooking. Can the airlines really afford to pay $5,000 to every customer who gets bumped tomorrow night? And let them take their chance. That kind of approach has not been included in any of the proposed legislation, and the difficulty, of course, is that you cannot blame the airline for all of the delay. However, we may want to consider this approach. I do not support it yet, but we have discussed the notion that somehow we have got to make the delays cost the airlines something so they will change on their own.

What is the department's attitude toward this?

Mr. SCOCOZZA. We would be relatively sympathetic to that, Senator, and I say that because of investigations which are under way. I am not really at liberty to talk about the particulars and the carriers involved.

Senator KASTEN. I was not anxious to talk about some of the discussions taking place on our side, either, but the fact is, the airlines have made an economic decision that it is better to take a chance that means 15 people on tonight's flight to Chicago will not make it to Chicago than to take a chance on leaving with a couple of seats that are unfilled. The economic incentives as they now exist favor this gamble on the part of the airlines.

Mr. SCOCOZZA. We have to act on information gathered during our own investigations and information provided to us on economic cancellations. One investigation I can recall now that is ongoing deals with denied boarding compensation on one particular carrier, and failure to remit refunds on a timely basis. That carrier is really facing a very, very serious enforcement action if it does not, in fact, cooperate with our investigators and caseworkers and resolve the problem. We are talking about close to several thousand passengers who have been touched, and I think it is going to take a similar parallel type ratio that we have done on the safety side.

If they are not going to voluntarily get in line in terms of having a more responsible procedure with respect to consumer complaints—and service that is being provided—they are going to be prosecuted and prosecuted severely. That is not the channel we would choose to go but I do not think we have an alternative.

Senator KASTEN. It is not the channel we would choose to legislate, either, and as I said, I am not there yet, but it is coming, and with the pressure that we are feeling, I think it is entirely within the realm of possibility that we are going to see us working the disincentive side as well as the so-called marketplace incentive side as we somehow force these kinds of changes to take place. I would be interested in your comments. I am sure you would all be anxious to comment.

Mr. CRANDALL. Senator, I think we are all seeing exactly the same thing. What I am urging, I think what Mr. Plaskett is urging, and what Mr. Dullum and most of our colleagues in the industry would generally endorse is, we are urging you to create a circumstance where the carriers in effect can compete on quality and thus expose themselves to the punishments of the marketplace if they

do not deliver quality. So you and I are saying precisely the same thing. Let us create a mechanism by which the carrier who chooses to deliver a quality product can prosper and the one who does not can perish.

The only disagreement that I would have with what you just said is, who shall be the enforcer? My experience over the years is that regulated enforcement, that is, punitive enforcement of anything is a great deal less effective than marketplace enforcement. Now, if you give me the ability so that I can run double truck ads in the New York Times which announces that our carrier is more reliable than my competitor, that our carrier does a better job of providing refunds, that our carrier does a better job of baggage transfer, the marketplace will punish the miscreant in my view more quickly, more effectively, and a great deal more terribly than any regulatory methodology that anyone might create.

As you know, you start getting into the notion of regulation, you get into the notion of hearings, and you get into evidentiary rules. The marketplace is faster and more effective as a disciplinarian than any kind of regulatory oversight, I believe.

Senator KASTEN. In Mr. Plaskett's testimony he talks about the difficulty of trying to give the consumer on a Washington to San Jose flight the information as to how many of the last flights were on time or a little bit later or way later. There is a balance in here, and that is why the task of working out a legislative solution to this is more difficult, but we have been able to move FAA toward stiffer penalties, toward safety, and that is a movement that has taken place because of what this committee and the other committees have done. I am suggesting to you that that same kind of pressure exists favoring better treatment of passengers but it is going to be harder to implement it, and you are saying to me that you do not resist it.

Mr. PLASKETT. I think there is pretty good evidence of how the marketplace has worked in one area, and that is denied boarding and denied boarding compensation. If you remember years back in the days of regulation there was a very long specific regulation about how people would be accommodated on board the airplane, and the people that got bumped were the people that came up at the last minute, the business traveler, the time-sensitive traveler. And they were very angry. The airlines responded by putting in the volunteer program, the bid and ask program, if you will, very carefully constructed.

The economics were weighed very carefully and analytically, and now the complaints about overbooking and being denied boarding have diminished substantially. Now, carriers have different records on the degree of volunteers that they are able to get, and in fact when they can't get volunteers they either have to up the price or impose the denied boarding rule.

I believe that if those data were public, that the carriers that are at the bottom of the list, it will not take them too long to begin to improve their own internal systems and solve that problem.

Senator KASTEN. I do not disagree with you, but I am just not sure that that is enough. If there were a significant penalty imposed if you or anyone else announced that a flight time from Point A to Point B is different than what it really is, you would be

less likely to do it. If there were a significant penalty for lost bags, you would be less likely to lose them.

Mr. PLASKETT. The most significant penalty we have, Senator, is to lose customers. And believe me, as a service-oriented company, we have to take care of our customers. The problems and travails of weather, of ATC delays, of many of the variables in this business make that job difficult sometimes.

Senator FORD. Let me make a point if I may. I am a captive shipper. I cannot get out of here but on one airline, whether they treat me good, bad, or indifferent. Now, if you want to start some competition and see if I will change an airline, you put another flight to Louisville.

Mr. PLASKETT. Senator, we are looking for all those opportunities, and I hope you will try our new service between Dulles and Lexington which starts——

Senator FORD. Yes, but I have got to drive an hour and a half to get to Dulles. I can go out here in 15 minutes. You make it convenient and you will get a passenger.

Mr. CRANDALL. If I could supplement Mr. Plaskett's comment, Senator, what the marketpace can do is very well illustrated, I think, in this whole overbooking issue. Let me give you some numbers. Back in the days of regulation when we had mandated penalties the economic tradeoff point occurred at about one in 1,200. That is that about one in 1,200 of all of the passengers who came to the airport with a reservation did not actually get on the airplane, but was involuntarily denied the right to board. Today that number is one in 55,000. 99.9 percent, in fact 99.999 percent, of all the people holding reservations who do not travel on a particular flight elect not to go voluntarily. The marketplace is very powerful and it will fix those problems. If you give us the mechanisms by which we can sell quality, the marketplace will be responsive to that, effort and we will be responsive to the markeplace.

Senator KASTEN. Mr. Chairman, my time has expired. I just want to say that in the opinion of many representatives of the people out there your evaluation of the situation is significantly different from theirs. And I would guess that with respect to the plane you will be on this afternoon, numbers of people on that plane are going to know that you are on it and maybe that plane is going to be operated differently from the way it would be if you were not on it. I do not know. The experience that most Americans have is worse, not better than two years ago or even a year ago, and they are fed up, and they are calling on us to do something. I think that providing information may be part of it, and I agree with what you are saying. I also understand that it is easier for the major airlines to make these kinds of statements than for smaller airlines that are going to be working on the margin and are still trying to establish their position in the marketplace. People are fed up. A significant of airlines have apparently made a business decision that they can get away with reducing the quality and come out ahead by doing that. That is why the quality reduction has taken place, and what we are saying is that maybe we have to alter that balance a tiny bit. Thank you, Mr. Chairman.

Senator FORD. Thank you, Senator. Let me just support Senator Kasten a little bit. Not a whole lot, Bob, just a little bit. We are

here today because of the public's complaints. We are not here because you are 99.999 perfect. Something is wrong. Your view of your operation and those you serve are somewhat different. We hear their complaints and the public is demanding improvement in the airline service. We are not necessarily up there on your side. We are frequent travelers, and we are the ones that observe the every day the problems that are out there. I might say to you that one of the nicest things that could happen to you is, when you are in trouble, that your staff not act like IRS agents. I know they are unhappy, and they have got lots of problems, and they are getting fussed at but they ought to take a course in politics.

I want to talk with the Department of Transportation just a minute. I also have some questions from Senator Kassebaum, who had to leave. I will ask one publicly and the others will be given to you in writing. Matt, let me ask you this. You have stated that at the recently completed scheduling discussions, the airlines eliminated many of the delays currently being experienced. However, DOT held similar scheduling meetings in 1984 which in the opinion of this Senator accomplish very, very little. The benefits were short term but it did not take it long to get back where it was. Why should we expect very much from your 1987 scheduling shuffle?

Mr. SCOCOZZA. Senator, you are right. In 1984 there was a limited amount of improvement because of the scheduling talks. Of course, the system was smaller so the problem was not as great as it could have been this summer. At the scheduling talks this spring we had over 1,300 changes and one of the things that we have noticed is that there were fundamental changes in the structure of scheduling of a number of carriers this time as opposed to just sliding schedules two or three minutes in different directions. I think that is going to contribute greatly to a reduction in delays coupled with a drastic revision of our air traffic control system on the east coast and the west coast where we expect 50 percent decreases in delays out of New York and out of San Francisco alone.

What we have done with respect to the scheduling is really short-term. We do not think it is productive to have these scheduling discussions again because what can be accomplished has been accomplished, I believe. What has to be done for the long term is a serious change in the scheduling practices of carriers, improvements of the air traffic control system, and as you have mentioned earlier, Senator, improvements in the capacity of the individual airports.

Senator FORD. What you are saying to me is that you hope these discussions will not lead to a third meeting of this type.

Mr. SCOCOZZA. We had hoped to mitigate the damage we knew was going to occur this summer. We had to do something in the short term and the scheduling discussions were the best tool we had available.

Senator FORD. Your procedure is to report monthly on the number of complaints received and list the airline with the worst record and the airline with the best record. The three airlines here today represent both the good and the bad. One problem that I have become aware of is that you do not promote your consumer hotline enough. I doubt many people in this room know your hotline number, or could reach in their pocket and pull it out.

Do you believe that the number of dissatisfied travelers is fairly represented by the number of complaints that you receive at DOT?

Mr. SCOCOZZA. I have to be honest with you, Senator. I do not think so because for the most part the DOT consumer office is not widely known throughout the industry. I was looking at some statistics, and I found that the Civil Aeronautics Board had a policy of only accepting written complaints and in about 1978 they had approximately 25,000 complaints. When we took over the responsibility, we got rid of the practice of having everything in writing. We accept telephone calls and we have computerized everything. Also, we do casework directly with the individual carriers. Last year we had about 13,000 complaints. I do not think that adequately reflects the numbers out there in the industry.

I think if you did a poll of the individual carriers many carriers would probably have far in excess of 13,000, complaints directed to them. But I think the complaints that we do have are probably a small sample indicating what the problems are. The vast majority of the 13,000 we receive deal with flight problems; a much, much smaller number deal with on-board services, courtesy of flight attendants and whatever.

Senator FORD. When you get a call and you get a complaint, what steps does DOT take to help resolve that particular problem that you received?

Mr. SCOCOZZA. Very similar to a case worker in a Congressional office. We call the airline. We try to negotiate a resolution of the issue, and in fact we have had a very, very high level of success with doing that, resolving cases sometimes in 10 percent of the time that it used to take the Civil Aeronautics Board.

When we inherited the Civil Aeronautics Board, there were 2,000 cases pending in December of 1984, so on January 1 we had 2,000 stale cases. We now keep a backlog of no more than 100 cases at a particular time, because we have computerized everything. As I noted, we do everything by telephone directly, linking the consumer complaint office with the carrier and an individual complainant, and we do a followup, call the consumer and ask if their problem has been resolved. If we see a pattern of complaints with any particular carrier, that may in fact turn into an enforcement action.

Senator FORD. You have said, I believe, that most consumer-related problems have resulted from mergers and acquisitions. Why didn't DOT, in the process of approving a merger make an effort to require a phase-in period of operations in order to avoid many of the problems that you state are a result of the mergers and acquisitions?

Mr. SCOCOZZA. Senator, we did not have a crystal ball when we approved these individual mergers, and we tried to rely on people in our presentations before the ALJ in a formal proceeding in terms of what they promised to do, what they believed they could do, and how to make a judgment on that. As I mentioned at the tail end of my testimony we are now instituting a new procedure in our merger program when a carrier comes to request merger authority. We ask them more specific details about their merger expectations. We have seen very, very responsible carriers who have

merged and have had incredible amounts of problems they never anticipated.

Northwest Orient and Republic. It is no secret they had a serious problem with respect to their merger in terms of the integration of all of the people, the services of the individual airports, baggage and handling, but as a result we found responsible carriers like Northwest and Republic spending tens of millions of dollars in an emergency fashion in the context of that merger to resolve their problems immediately.

A lot of the serious consumer problems we saw at the beginning of that merger transition, we have seen disappear. We try to follow and monitor those particular merger situations very closely. And that will help us do a better job in the future, I believe.

Senator FORD. I am worried about mergers. You talked about the integration of personnel. It seems to me an employee that has given distinguished service to an airline and had no input in a merger that results in a Chapter 11 filing or in getting a salary cut is unfair. I am somewhat concerned about those people. I have seen other mergers in industry where that transpires, and people who have given 30 or 35 years are out on the street. It is a bad situation. What factors under the present law do you impose at the time a merger takes place as it relates to the employee protection?

Mr. SCOCOZZA. The standard that we followed, Senator, was one established back in 1979 at the Civil Aeronautics Board, and that is, basically, if a merger will result in a serious disruption to the national air system, then there is probably a case for the imposition of labor protection provisions. But I would make note of the fact that a number of mergers have come before the Department of Transportation where by agreement of the parties they came forth and requested labor protection provisions to be imposed.

I would also make note of the fact that the——

Senator FORD. Were they imposed?

Mr. SCOCOZZA. Yes, they were, by a voluntary agreement between the parties. But those——

Senator FORD. That was voluntary by the airlines——

Mr. SCOCOZZA. By both airlines.

Senator FORD [continuing]. But not by imposition of Department of Transportation.

Mr. SCOCOZZA. Right.

Senator FORD. Ever.

Mr. SCOCOZZA. No, you are right. And in the context of the merger applications I am familiar with, the last time I can remember labor protection provisions being imposed was the integration of seniority lists with the Pan Am-National merger, and as a result of that imposition of labor protection provisions, I still think there is litigation in court. I still think a tremendous amount of pilots and cockpit crew are litigating the labor protection provisions and what they mean in the courtroom today. So I do not think the LPPs necessarily resolve the labor protection situation, but I have seen a tremendous amount of labor and management give and take in the context of mergers. By the same token, Senator, there have been carriers that have been on death's doorstep, not from a safety standpoint but from an economic standpoint, and a carrier willing to take on the failing carrier only on the condition that labor pro-

tective provisions would not be imposed. In the absence of that, the merger just would not exist, and the company would have gone out of business. The purchasing company would have just cherrypicked a much smaller amount of the labor work force, and if you look at the history of the mergers that have been approved, a number of the partners have really been on the brink in terms of their economic standpoint, with the banks calling us literally on a daily basis asking when there might be a prognosis for approval or a finalization of a merger situation.

Senator FORD. Well, I know you can argue that case, but what about two viable airlines getting together? What happens then?

Mr. SCOCOZZA. When we see a situation with two viable airlines, we have often seen agreement of the parties to abide by labor protection provisions. I cannot recall the ones off the top of my head but I would be delighted to provide that history for you in terms of the 19 mergers that we handled at the Department of Transportation.

[The following information was subsequently received for the record:]

The case where carriers have agreed to labor protection provisions are: Delta-Western, U.S. Air-Pacific Southwest Airlines, and U.S. Air-Piedmont.

Senator FORD. Let me now talk to the representatives from American, Continental and Delta Airlines. I believe each of you has said that you either support or could accept the collection of information on airline performance.

Apart from not requiring the dissemination of that information at the time of making a reservation or purchasing a ticket, what steps should be taken to make this information accessible and helpful for air travelers?

Mr. PLASKETT. Senator Ford, in my view there will be absolutely no problem at all in getting very widespread dissemination of those data once they are reported. Certainly the media follows it very closely. In fact, the Department of Transportation consumer complaint statistics, once they are released, are in virtually every newspaper across the country within 24 hours.

I believe the airlines that sit at the top of the list will make every good use of those data, and I do not think there will be any problem at all in making the consumer aware.

Mr. CRANDALL. I would agree wholly, Senator. I think, in the first place, that the media will publicize them widely in tabular form.

Secondly, I can assure you that they will be used by those carriers who do well in those comparisons in comparative advertising.

Finally, as I said in my testimony, we are willing and we plan to put that data into displays in our computer reservations system so that it would be immediately available to any traveler who wished to interrogate either a travel agent or an airline.

So I think there are many effective ways to get that information out there, and I think we ought to make every effort to get that information so that we can use it.

Mr. DULLUM. Mr. Chairman, our addition to that would be that it be given to the DOT and hopefully on a quarterly basis rather than a monthly basis. I think that the information would still be

very valid and once it were out for public consumption that it would continue to be valid.

Senator FORD. Well, as I listen to you, you are saying that the media will have the responsibility when this is announced, and if you are number one you will advertise, or if you are number two trying to be number one you will advertise that. There is, however, a great list of airlines that probably will not advertise, so we are not going to get. The results I believe should ensue.

What is the additional cost? You held up a big sheet there a while ago. What is the additional cost to an airline for securing this kind of information?

Mr. PLASKETT. Certainly, Senator, the cost to get the information to the consuming public this way would be far in excess of the benefits. This, for one market, is $1,600,000 for one run. The important point, however, is that the information is out of date at the time that it is released.

Giving the information to the consumer when they call reservations would add a tremendous cost to the carriers for the additional talk time.

Senator FORD. Well, Mr. Crandall just said that a passenger could ask the percentage of on-time departures or arrivals of a particular flight. When you educate the public to that, you are going to be interrogated.

Mr. PLASKETT. The issue is whether or not a regulation would require it specifically by flight or on a system basis or on a major hub basis. That was the foundation for our filing at the DOT, to examine those options, look at the cost benefits and determine what the best course of action is from there.

Mr. CRANDALL. To give you a frame of reference, Senator, if you extend every conversation between a passenger and one of our reservation agents by one second, in the aggregate that adds $250,000 to American's annual cost. You can roughly multiply that by seven, and that is the cost to the industry.

So in round numbers——

Senator FORD. Every second is going to cost roughly $1.25 million?

Mr. CRANDALL. About $1.75 million. So that if, for example, on average, if every telephone reservation call were extended 20 seconds, you would add on the order of $35 million a year to the industry's costs.

I think the answer to all the questions that you may raise—can we do this, can we do that, can we do the other thing, can we do it in this particular way—is that the industry is capable of nearly anything.

Senator FORD. If you want to pay for it.

Mr. CRANDALL. Yes, sir. It is a question of what are the cost/benefit tradeoffs.

Senator KASTEN. Mr. Chairman.

Senator FORD. Yes, Bob.

Senator KASTEN. If you would yield, I just want to make the point that all of the answers that we just had assume that a consumer has viable choice between airlines. That is the case for Chicago, Washington, Los Angeles or New York. That is not the case for the vast majority of the kinds of flights that the people at this

table have been discussing. In many cases there is not a choice, or the choice is a 2:30 p.m. flight or a 7:00 p.m. flight. For most of us, that is not a choice, and for most of America that is not a choice.

So we can do all we can in terms of disclosing information, and it will work wonderfully well for New York to Chicago. It is the flight from Louisville to Washington or the flight from Green Bay to Minneapolis that is creating, I think, a significant problem.

So you cannot assume that consumers have a choice. In many cases there is no choice; therefore, there has to be some incentive to improve the system even in the places where there is no viable choice.

Mr. CRANDALL. Senator, I would only ask that we have a chance to provide you with some information and data on that.

One of the things that deregulation has done is it has made this industry enormously more competitive, and a very, very large percentage of all travelers have a wide variety of choices. You, of course, are correct. There are, in fact, some markets in which competition is limited, but in a great number of markets there are many, many alternatives.

I believe that you will find when you look at the data that the percentage of times when there is a choice is so overwhelming that letting the marketplace get our problems fixed is probably going to be a quicker and more effective way than the alternative.

Senator FORD. I have two more questions, my last one and the one for Senator Kassebaum.

If I understood you gentlemen correctly, when you address the need for additional controllers, that was not your problem. It was the availability of space and runways to get out on time. You were not blaming the controllers for the delay on the ramp or problems such as that. Am I correct in that, that the controllers were not your problem as it related to the ability to depart?

You are talking about 40 flights going off at the same time. However that is only really 20 because you have two airlines, two strips, and two planes can take off at the same time, and they can land at the same time.

I may be wrong, but I wanted to go back to that point before I end at the break.

Mr. PLASKETT. Senator, in my view it is a multi-faceted problem. There are many variables which make up the capacity of the air traffic control system: the number of controllers; runway capacity; computers and so on. In my opinion, it is all of the above. We need more controllers. We need more runway capacity. We need more gate capacity.

So I am not sure you can pick any one piece or any one variable out of the equation.

Senator FORD. What I was gleaning from what you were saying is that sitting on the ramp with inadequate facilities to get off was not the problem of the controller, and under those circumstances you did not need additional controllers. You needed additional facilities, and then you would need additional controllers.

Mr. PLASKETT. That could be.

Mr. CRANDALL. Senator, I would echo Mr. Plaskett's statement. It is a problem of many parts. For example, in some circumstances where it is impossible for us to leave Nashville, the reason we

cannot leave Nashville is that there are not enough controllers at the Indianapolis traffic control facility; that is, there is no one there whose sector of responsibility is able to absorb another flight; therefore, we stay on the ground until we can fit into the system.

So I think what Mr. Plaskett says is exactly right. It is a problem of many parts: more ILS systems; more runways; more controllers; more radar capability. All of the pieces of the system must be enhanced if we are going to have a system which is as fully capable as it can be.

Mr. DULLUM. It only proves, Mr. Chairman, that the system is overloaded, and many of the ground holds to which I referred are not the tower controller in Atlanta or the one in Chicago or the one in Dallas, but it is en route control or it is the weather or it is something else.

I agree with Mr. Plaskett that it is a number of things involved.

Senator FORD. I want to ask you this question. How long do you hold a flight for another airline's arrival that is late in order to accommodate the customers from that airline? Do you ever hold it, or do you just go on? If you have 15 or 20 passengers you might hold it; if you have one you let it go?

Senator KASTEN. Is there any difference in holding for a flight on your airline as opposed to holding for somebody else?

Senator FORD. Somebody else's is what I am talking about. I know they will hold for their airlines.

Mr. CRANDALL. Senator, it is a problem. There is no perfect solution. The answer is, "Sometimes we do, sometimes we do not." Let me try to illustrate the nature of the problem.

In an earlier answer, Mr. Plaskett talked about cancellations and noted that cancellations are often driven by our desire to inconvenience the fewest people. Now, if we have a connection at Dallas-Fort Worth or at Chicago and inbound airplanes are bringing 40 people destined for some other destination, and it is the last time that day that those people can get to that destination because the connecting flight is the last outbound departure of the day, we are likely to hold the airplane for 45 minutes, sometimes even longer.

On the other hand, if that airplane is scheduled to depart in the middle of the day, and if the passengers failing to make the connection can get an alternate connection an hour and a half later, we would not hold it as long.

It is a matter of balancing aircraft resources and inconveniencing our passengers as little as possible.

Senator FORD. Well, who has control of that? Do you have a section?

Mr. CRANDALL. Yes, sir.

Senator FORD. Do you have to be the president and chairman of the board to make that kind of decision?

Mr. CRANDALL. No, sir, I try not to make those decisions. I would be delighted to have the opportunity to show to you and the other Members of the Committee the way we handle the problem. We have what we call a system operating control center which monitors the ongoing capabilities of the airline. There is one of those at each of the major hubs, and there is one for the airline as a whole.

They make those tradeoffs, taking into account the views of the local airport people and taking into account a wide variety of fac-

tors. The driving objective is to inconvenience as few of our customers as possible.

Senator FORD. This is Senator Kassebaum's open question which she has asked me to present.

So her question is, to some extent airline flight delays appear to be excessive at airports where airlines have high levels of control or close to monopoly control over certain routes. In fact, there may well be cause to consider Federal preemption to prevent single carriers from getting this type of market control.

The most logical approaches to such preemption would require Federal action with respect to the allocation of slots. Do you think the problem could be addressed through slot allocation?

Mr. CRANDALL. I have always said to you, Senator, in my view, in the long term if we are going to have a fully reliable system, we are going to have to have a broader system of capacity allocation, including a broader use of slots. So I guess the simple answer to Senator Kassebaum's question, for me at least, would be yes.

Mr. DULLUM. Yes.

Mr. PLASKETT. Yes.

Senator FORD. Thank you very much. You have been good, and you have been here a long time. We look forward to working with you for a better airline system with safety and passenger accommodations.

Thank you.

The next witness is James E. Landry, Senior Vice President and General Counsel, Air Transport Association from here in Washington.

Mr. Landry, we are delighted to have you. Your statement will be included in the record in full. If you want to highlight it or whatever you would like to do, it is up to you.

STATEMENT OF JAMES LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION

Mr. LANDRY. I am pleased to have this opportunity to discuss with you several important issues affecting our Nation's——

Senator FORD. Just a minute, now. I would like for the room to come to order so I can hear this. It is time that we pay attention. I do not want reverance, I just want quiet.

Proceed, Mr. Landry.

Mr. LANDRY [continuing]. Several important issues are affecting our Nation's air transportation system. This Subcommittee has asked ATA to discuss three issues: the future of the Department of Transportation's airline merger approval; antitrust immunization authority; and the need for statutorily imposed mandatory labor protection provisions in the airline industry. We have done so in our prepared statement, and in these few minutes I will summarize that submission.

Congress decided in the CAB Sunset Act of 1984 that the merger and interlocking boards of director approval authority contained in sections 408 and 409 of the Federal Aviation Act should be transferred to DOT when the CAB sunset, and that those provisions should continue in existence until January 1, 1989.

Similarly, Congress concluded that the authority of the CAB under section 412 of the Act to approve intercarrier agreements and its authority under section 414 of the Act to provide antitrust immunity for intercarrier agreements should be transferred to DOT.

It established in the Sunset Act a January 1, 1989 repeal date for the interstate and overseas air transportation applicability of the transfer of sections 412 and 414 authority but placed no termination date on that authority insofar as it applied to foreign air transportation.

Finally, Congress did not add to the Federal Aviation Act any requirement that labor protection divisions be imposed as a condition to DOT's approval of a merger or acquisition under section 408 of the Act.

Our members would have no objection if Congress decided to terminate the authority of sections 408 and 409 of the Act before the existing January 1, 1989 repeal date. Our industry's position about the early disposition of section 408 authority is subject, however, to an important condition.

We are firmly of the view that the demise of section 408 should not be the occasion for the creation in the Federal Aviation Act or elsewhere in the U.S. Code of a requirement that labor protection provisions be imposed as a condition to permitting an airline merger or acquisition to go forward.

Such a requirement would be an entirely unneeded assertion of government economic regulation over the airline industry—a requirement that, even at the apogee of economic regulation of our industry, Congress never mandated.

Our opposition to mandatory labor protection provisions flows from two sources. First, such provisions would unreasonably treat the airline industry differently than other industries which are not subjected to government economic regulation. Airline employees who, as a group, are remarkably well compensated do not require such special government protection. We see no reason why employees in the airline industry, who number only about 412,000, should be the recipients of benefits that the remaining 110 million employees in our Nation's work force do not possess.

Second, the mandatory imposition of labor protection provisions would unjustifiably interfere with the collective bargaining process. Labor protection provisions, most notably those found in the CAB's Allegheny-Mohawk decision in 1972, involve matters that should be resolved across the bargaining table. To the extent that the government were to intrude in this area, it would remove issues from the bargaining process and thereby advantage labor at the expense of management.

Such a result would be contrary to the labor relations policy of our Nation. If such provisions are to be included in a transaction, they should be the result of labor-management negotiations and not government imposition.

With respect to sections 412 and 414 authority, our members unanimously believe that that authority should be continued and remain at DOT insofar as foreign air transportation matters are concerned. The competitive and political environment in which international airline activities are conducted are fundamentally

different than that in which domestic airline activities are conducted, and that difference must be recognized.

Many other sovereign governments whose power over our airline operations to their countries are equal to our own do not fully embrace our competitive policies or the full sweep of our antitrust doctrines. Consequently, there needs to be a mechanisn that permits the United States Government to approve agreements that airlines operating international services enter into and to afford such agreements immunity from our antitrust laws to the extent necessary to enable them to be implemented.

As you are aware, approval of agreements that airlines submit to DOT concerning foreign air transportation is not automatic. DOT must apply public interest criteria, which includes examination of the provisions of applicable bilateral aviation agreements, to its evaluation of such agreement.

Our members have differing views about whether sections 412 and 414 authority for domestic agreements should be repealed before the January 1, 1989 termination date for such domestic agreements that the Sunset Act established. Many believe that because of the uncertainty afflicting various matters involving our industry, especially airways and airport capacity, that it would be prudent to allow sections 412 and 414 to remain in effect for domestic purposes until January 1, 1989.

Some others feel that the early sunset of that authority is desirable, particularly in light of the industry's position regarding the disposition of sections 408 and 409 authority.

Before closing, permit me to turn from these statutory provisions to another area of vital interest to our entire industry. Considerable discussion has occurred recently in Congress and here this morning and elsewhere concerning airline flight delays and consumer protection matters. I would like to share a few thoughts with you about those issues.

Flight delays result from two fundamental factors: First, the traveling demands of the public. Consumers tend to want to travel at particular times of the day. This is, of course, particularly true for business travelers, but it also applies to pleasure travel.

Secondly, the patently inadequate capacity of the airport and airway system. We abhor delays because they repeatedly frustrate our customers and greatly complicate our operations. Unfortunately, they have become all too common in the last few years. We realize that without decisive action, delays will persist. That is why for the short term we have urged Congress to fund adequately the budget of the FAA, and encouraged the FAA, consistent with safety considerations, to modify its air traffic control procedures to accommodate additional traffic and, for the long term, pressed for the creation of the National Aviation Authority.

With respect to air traffic control procedural improvements, we note with considerable satisfaction that the FAA's recently implemented East Coast Plan has greatly reduced delays at the three principal New York City airports.

The bottom line must be clearly understood. We are suffering from capacity limitations which require immediate governmental and industry attention to bring about both short and long-term remedies.

Again, thank you for giving us this timely opportunity to offer our views on these important issues.

[The statement follows:]

STATEMENT OF JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION OF AMERICA

Good morning. I am pleased to have the opportunity to discuss with you the disposition of the Department of Transportation's merger, antitrust immunity and labor protection authority, as well as several other important issues that are affecting our Nation's air transportation system.

The airline industry is transporting historic numbers of passengers to a record number of locations, the vast majority of whom are enjoying the benefits of discounted fares. This is precisely what Congress intended when it decided to sunset the economic regulation of the domestic operations of the airline industry. The dynamism that has characterized our industry, of course, has not only benefited the traveling and shipping public but also has produced issues that require our attention. I would like to review some of them with you.

The airline industry's activities reflect the workings of the marketplace. We respond to consumer demand and we believe that we do so effectively and economically. By way of example, in 1986 U.S. airlines carried 415 million passengers. This represents a 50 percent increase over the 275 million passengers that we carried in 1978, the year in which the Airline Deregulation Act was enacted. Moreover, 90 percent of airline passengers used some form of reduced fares last year and the average depth of the discount was about 60 percent.

Consumer demand exposes us to extremely potent forms of discipline. If an airline does not meet the needs of passengers or shippers, it loses customers and effectively invites competitors to provide the services that disaffected customers want.

Nevertheless, airlines find themselves in an incongruous situation. We have embraced in principle and in fact the workings of the marketplace. Yet, our ability to function in the marketplace is still inextricably dependent upon the government's provision of airport and airways capacity. Without that capacity, we would not have the wherewithal to provide services to the public. Unfortunately, there is ample evidence that the government has not been providing the airport and airways capacity to meet our customers' transportation needs. We believe that this is a matter that requires immediate Congressional attention.

The Subcommittee has assigned the panel that ATA is appearing on this morning three issues. They are the future of the Department of Transportation's airline merger approval and antitrust immunization authority, and the need for statutorily imposed mandatory labor protection provisions in the airline industry. These issues have been the subjects of much testimony before Congress over the last few years.

When Congress three years ago examined the disposition of the remaining functions of the Civil Aeronautics Board under the Federal Aviation Act, it decided in the CAB Sunset Act of 1984 that the merger and interlocking boards of director approval authority contained respectively in sections 408 and 409 of the Federal Aviation Act should be transferred to DOT when the CAB sunset on December 31, 1984 and that those provisions should continue in existence until January 1, 1989. Similarly, Congress concluded that the authority of the CAB under section 412 of the Act to approve inter-carrier agreements and its authority under section 414 of the Act to provide antitrust immunity for inter-carrier agreements should be transferred to DOT. It established in the Sunset Act a January 1, 1989 repeal date for the interstate and overseas air transportation applicability of the transferred section 412 and 414 authority. Congress, however, placed no termination data on that authority insofar as it applied to foreign air transportation. Finally, Congress did not add to the Federal Aviation Act any requirement that labor protection provisions be imposed as a condition to DOT's approval of a merger of acquisition under section 408 of the Act.

Our members would have no objection if Congress decided to terminate the authority of sections 408 and 409 of the Act before the existing January 1, 1989 repeal date. Whatever usefulness those provisions may have had when the CAB regulated the economic affairs of the airline industry, they no longer serve any necessary purpose. The airline industry's desire to be treated like other industries which are not subjected to governmental economic regulation prompts this view.

Our industry's position about the early disposition of section 408 authority is subject, however, to an important condition. We are firmly of the view that the demise of section 408 should not be the occasion for the creation in the Federal Aviation Act or elsewhere in the U.S. Code of a requirement that labor protection provisions

be imposed as a condition to permitting an airline merger or acquisition to go forward. Such a requirement would be an entirely unneeded assertion of government economic regulation over the airline industry. Indeed, the Department of Transportation has consistently refused to condition its approval of airline mergers on the acceptance of labor protection provisions. It has repeatedly concluded that the deregulation of the airline industry has made inappropriate governmental determination of such employee benefits. It would be doubly incongruous to impose such conditions on airlines today: not only would it be inexplicable to repeal special airline industry merger legislation and simultaneously impose unique airline employee labor protection requirements on transactions that are to be judged under laws applicable to all sectors of our economy, but it would also create requirements that even at the apogee of economic regulation of our industry Congress never mandated.

Our opposition to mandatory labor protection provisions flows from two sources. First, such provisions would unreasonably treat the airline industry differently than other industries that are not subjected to government economic regulation. Airline employees, who, as a group, are remarkably well compensated, give no indication of requiring such special governmental protection. We see no reason why employees in the airline industry, who number only about 412,000, should be the recipients of benefits that the remaining 110-million employees in our Nation's workforce do not possess. Second, the mandatory imposition of labor protection provisions would unjustifiably interfere with the collective bargaining process. Labor protection provisions, most notably those found in the CAB's *Allegheny-Mohawk* decisions in 1972, involve matters that should be resolved across the barganing table. To the extent that the government were to intrude in this area, it would remove issues from the bargaining process and thereby would advantage labor at the expense of management. Such a result would be contrary to the labor relations policy of our Nation.

A bill that is before this Subcommittee, S.943, would result in the creation of statutory labor protection requirements. It would intrude into labor-management relations and, because of the costs that it could impose upon airline transactions, it could frustrate prospective transactions. This last point is quite important. In shorthand descriptions of the bill, people often say that it would require the Secretary of Transportation to perform a cost-benefit analysis in determining whether to impose labor protection provisions as a condition to approving a transaction for which section 408 approval is required. That is an inadequate description. In fact, the bill provids that should the projected benefits of a merger outweigh the costs of the labor protection provisions, the Secretary would be required to impose them. This would be an illusory standard. As a practical matter, it would mean that all section 408 transactions would be conditioned on labor protection provisions. If such provisions are to be included in a transaction, they should be the result of labor-management negotiations and not government imposition.

With respect to section 412 and 414 authority, our members unanimously believe that that authority should be continued and remain at DOT insofar as foreign air transportation matters are concerned. The competitive and political environment in which international airline activities are conducted are fundamentally different than that in which domestic airline activities are conducted and that difference must be recognized. Many other sovereign governments, whose powers over our airline operations to their countries are equal to our own, do not fully embrace our competitive policies or the full sweep of our antitrust doctrines. Consequently, there needs to be a mechanism that permits the United States Government to approve agreements that airlines operating international services enter into and to afford such agreements immunity from United States antitrust laws to the extent necessary to enable them to be implemented. As you are aware, approval of agreements that airlines submit to DOT concerning foreign air transportation is not automatic. DOT must apply public interest criteria, which include examination of the provisions of applicable bilateral aviation agreements, to its evaluation of such agreements.

Our members have differing views about whether section 412 and 414 authority for domestic agreements should be repealed before the January 1, 1989 termination data for such domestic agreements that the Sunset Act established. Many believe that because of the uncertainty afflicting various matters involving our industry, especially airways and airport capacity, that it would be prudent to allow sections 412 and 414 to remain in effect for domestic purposes until January 1, 1989. Some others feel that the early sunset of that authority is desirable, particularly in light of the industry's position regarding the disposition of section 408 and 409 authority.

Before closing, permit me to turn from these statutory provisions to another area of vital interest to our industry. Considerable discussion has occurred recently in

Congress and elsewhere concerning airline flight delays and consumer protection matters. I would like to share a few thoughts with you about those issues.

Flight delays result from two fundamental factors. First, the travelling demands of the public. Consumers tend to want to travel at particular times of the day. This is, of course, particularly true for business travelers, but it also applies to pleasure travel. Second, the patently inadequate capacity of the airport and airways system. We abhor delays because they repeatedly frustrate our customers and greatly complicate our operations. Unfortunately, they have become all too common in the last few years. We realize that without decisive action, delays will persist. That is why, for the short term, we have urged Congress to fund adequately the budget of the Federal Aviation Administration, and encouraged the FAA, consistent with safety considerations, to modify its air traffic control procedures to accommodate additional traffic, and, for the long term, pressed for the creation of the National Aviation Authority. With respect to air traffic control procedural improvements, we note with considerable satisfaction that the FAA's recently implemented East Coast Plan has greatly reduced delays at the three principal New York City airports.

The bottom line must be clearly understood. We are suffering from capacity limitations that require immediate governmental and industry attention to bring about both short- and long-term remedies.

With respect to consumer protection concerns, we want you to know that the airlines are listening to their customers. There is a very tangible commercial imperative for airlines to treat their customers properly: they will go elsewhere if they do not receive the service they expect.

Thank you for giving us this timely opportunity to offer our views on these important issues.

Senator FORD. Mr. Landry, we thank you for coming. We appreciate your taking your time to join us at the hearings here today.

You said that some of your members want to continue, I believe, until January 1, 1989 DOT's authority to immunize airline activities from the antitrust laws. What types of activities would you envision needing that much immunity?

Mr. LANDRY. Mr. Chairman, that power, that authority, is now very rarely used, but it has been used in emergency occasions. It was used, for example, at the time of the PATCO strike when the carriers were obliged to reorganize the system, if you will, and on that occasion antitrust immunity was accorded those discussions.

The industry has, of course, held recent discussions with regard to schedules of the airlines, in trying to smooth out some of the peaking on a voluntary basis. I assure you that the carriers who think that that authority should be continued look at it only as an emergency power to be used in emergency situations—but one which, in their view, should continue until we finally get a system where there is adequate capacity in the infrastructure to accommodate the tremendous demand that deregulation has triggered.

Senator FORD You mentioned this in your statement, and I would like you to elaborate on it, if you will. Why do foreign air carriers need to retain the ability to collectively meet and be immune from the U.S. antitrust laws?

Mr. LANDRY. Well, as I am sure you realize, Mr. Chairman, each nation has complete and exclusive sovereignty over its own air space. It is a matter of treaty law, and it is a matter of customary international law. For one of our carriers to land in nation X, therefore, we are subject entirely to authority granted by nation X. Ususually that is traded back and forth across negotiating tables in the form of bilateral air transport agreements.

A number of those nations, while they are slowly coming to our pro-competitive philosophy, are quite a way behind us in that regard and are not willing to open it up to all our competition as

yet. Some of the kinds of agreements that must be struck as a result of that, whether it is in the area of fares or in the area of capacity, are really alien to our antitrust philosophy but it is a fact of life to which we are subjected.

Again, it is within their sovereign power, and in order to serve those countries, the carriers of both sides entering into the competition, which is not all-out competition in some cases, must reach agreements which on occasion do need immunity from our antitrust laws.

Senator FORD. So American foreign carriers are immune when they start discussing with country X from our antitrust laws?

Mr. LANDRY. The negotiations, Mr. Chairman, are carried out by the two governments. Then there are the ultimate discussions with regard to fare levels, which now are agreed to within a zone of reasonableness. The agreements that are entered into are then submitted to the Department of Transportation for their review and approval and the conferring of antitrust immunity.

Senator FORD. I want to get that on the record in more detail. I appreciate it.

Let us get to labor protection provisions a little bit. If Congress is to act on S. 943 to mandate some type of labor protections, what provisions do you find the least objectionable, and would the mandatory integration of seniority lists be acceptable?

Mr. LANDRY. Mr. Chairman, I do not want to avoid the question, but our feeling is——

Senator FORD. Well, do the best you can.

Mr. LANDRY. I am sure I will.

Let me stress something which I believe Mr. Scocozza said in the course of his testimony. In the great bulk of the mergers that have taken place in the last several years, the carriers themselves have entered into agreements in which they have conferred labor protection provisions upon the employees as a result of the negotiations.

We think that belongs in the negotiating process across that bargaining table. We think that that is something that the government should not remove from the bargaining that goes on between carriers and, of course, their unions.

I think you will find when you investigate that the filing carrier has usually or quite often, I believe in the majority of cases, has had a higher wage scale, and the bulk of the employees have moved to higher wages. That is not always the case. There are exceptions, obviously.

In any event, we think it very properly belongs in that negotiating process. I would have to examine if there is any part of the loaf, as you were suggesting, that the industry would think was, so to speak, desirable or livable, but I would urge you to think very hard about the wisdom of keeping it in the bargaining process.

Senator FORD. Well, they have already bargained once, you know, and that ought to be acceptable to me. Once they are integrated, then you can go from there.

Let me just go back to something you said. Given the fact that most of the industry, as you said, has already completed or is in the process of completing their mergers and acquisitions, why do the airlines oppose mandated labor protection provisions?

You look out there. How many more mergers and acquisitions are you going to have? So if that is already done, why should you object then to mandating some labor protection provisions?

Mr. LANDRY. Again, I think that the carriers who are looking down the road at the possibility of some further minor mergers or even major mergers feel that that should be something that should be negotiated across the table and not mandated by the government. No other industry has had mandatory labor protection provisions.

Senator FORD. The railroads do.

Mr. LANDRY. But the DOT obviously has the power and has created what we think is a very good two-prong test for the imposition of labor protection provisions, both the serious disruption of the national air transportation system that Mr. Scocozza referred to and another one which referred to the specific circumstances and the need that DOT might perceive in those circumstances for the imposition of labor protection provisions in order to assure fair wages and equitable working conditions for the employees involved.

Senator FORD. I heard Mr. Scocozza say a few moments ago that those airlines were at death's door economically and, therefore, it was God-sent that somebody took them over.

Those who are attempting to acquire and to merge in the airline industry today are educated about the industry. They look at what they might be able to acquire and how much profit will be available and what they will be able to do in the future. So I would say there was premeditation in some of the acquisitions.

Now, whether I am right or wrong I do not know, but I am just sitting on the outside and looking in as the general public would look. When you file for Chapter XI on Friday night and you fly on Monday morning, there is a lot of thought given to that.

You just cannot tell me that there was not a lot of thought involved in such decisions. That was premeditated, in my opinion. We have antitrust provisions which require an acquiring company to spin off something in the acquisitions, and that is where people get hurt.

I watched General Electric spin off one of its little sections which affected about 400 employees. Some employees had worked there for as long as 35 years. It did not make any difference.

When they had to spin it off, a new company acquired it. However their salary was cut by one-third, their health insurance premium increased 300 percent, their retirement age was increased from 62 to 65. They went through all of that, and that was an acquisition that was approved by the parent company whom they had given 30, 35, 40 years of service to. They cut their vacation time and everything. What are you going to do?

I do not know where I should have been on that one. I had sympathy because most of them were women. It happened in my hometown, and I watched what was happening to all those people. On Sunday morning I went to church with them. They taught Sunday School, and they were deacons in my church. It was just a sad, sad day for me.

Now, if I am a bad boy in the minds of business because I wanted to give those women and those men that worked in that place some type of labor protection, then I am going to take the slap and be a

bad boy, because that was wrong. I see a lot of that occurring out here in big business. More mergers, more takeovers, and the only way you save money is by laying people off. That is the unfettered marketplace at work. Let it work, but look at our unemployment. Look at our balance of trade. Look at all these things. We are not in competition here anymore. Big companies send it all overseas.

I am preaching a little bit now, and I apologize for that, but I have a real gut problem about not protecting people who have given valuable and distinguished service.

The one result that bothers me about not giving labor protection is the sensitivity to safety. I am not trying to take sides. I am trying to satisfy the concerns of my constituents so that when he or she gets on an airplane they have confidence it is going to arrive on time, that it is going to be safe, and that they are going to get good service. However, when you have the cheapest labor which may create a bad attitude, you may not have the greatest safety operation in the world.

I may be all wrong. If you want to argue with me some, I will give you that opportunity right now.

Mr. LANDRY. Well, I do believe, Mr. Chairman, that safety really is paramount and a number one priority in the eyes of every airline management. We did not deregulate safety. The FAA is sitting there with all the enforcement powers it needs to make sure that safety does not deteriorate. I think it is doing its job and will continue to do so.

Senator FORD. Well, I have some real problems about safety, and I am beginning to think I would rather have luck than skill; like playing golf, you know. I would rather have luck than skill.

Mr. LANDRY. Looking ahead to the Derby, I hope I have that, too.

Senator FORD. I have no other questions for you, Mr. Landry. I have some real sympathetic feelings toward some of the people affected by mergers. I have seen too much of it here lately. It is beginning to bother this old man, and I just want you to know it. I know where you come from. I appreciate your attitude and I appreciate your good-natured approach to it. Maybe we can work out something that will be acceptable to everyone.

I do not want to get in the middle. I will come down on one side or the other. I will not stay in the middle.

Mr. LANDRY. Let us not forget there is a Department of Justice there with the Clayton Act.

Senator FORD. That is right, and maybe that is where everything needs to go.

Thank you, Mr. Landry. You are mighty nice, and I do appreciate it.

The next witness and the final witness for the day is Robert M. McGlotten, Director of the Department of Legislation, American Federation of Labor and Congress of Industrial Organizations. Come in, Bob, and go to it.

STATEMENT OF ROBERT M. McGLOTTEN, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY ERNIE DuBESTER, LEGISLATIVE REPRESENTATIVE; AND R. RUSSELL BAILEY, COUNSEL, AIR LINE PILOTS ASSOCIATION

Mr. McGLOTTEN. Thank you very much, Mr. Chairman. I am delighted to be here today to address our concerns. Although this hearing has focused on the whole question of transfer of authority and the need to address some issues related to consumers, we want to address another issue that is very timely and paramount to those issues which we have addressed today, and that is the question of the employees and S. 943.

Accompanying me today, Mr. Chairman, is Ernie DuBester, who is sitting on my left, who is a legislative representative for the AFL-CIO Department of Legislation; and Russ Bailey, who is sitting on my right, who is counsel for the Air Line Pilots Association.

Mr. Chairman, the AFL-CIO appreciates the opportunity to testify in support of S. 943, legislation to require the U.S. Department of Transportation to impose labor protective provisions, LPPs, in connection with mergers, acquisitions and other financial transactions in the airline industry which can adversely affect employees.

I am here today not only as Director of the AFL-CIO's Legislative Department but also in my capacity as Chairman of the Airline Labor Coordinating Committee of the AFL-CIO. This committee consists of the International Union of Machinists and Aerospace Workers, the Air Line Pilots Association, the Association of Flight Attendants, Transport Workers Union, Flight Engineers International Association, and the Brotherhood of Railway and Airline Clerks. Together, these labor organizations represent the vast majority of contract employees in the air transport industry.

This legislation, Mr. Chairman, is of critical importance to our members. As Senator Adams pointed out in his introductory statement on S. 943, airline employees had never received the protection which Congress thought it had provided in the Airline Deregulation Act of 1978. At the same time, the Department of Transportation has ceased to provide labor protective provisions to employees affected by airline mergers and acquisitions.

As we all know, the forces of deregulation firmly gripped the airline industry almost immediately after enactment of deregulation with consistent serious adverse effects to thousands of employees in this industry. Moreover, we are now going through what might be called the merger phase of deregulation. Many thousands more employees will be adversely affected as carriers acquire one another or merge with one another.

Together, just the acquisitions that have been consummated in the last year and those currently under consideration by the DOT will affect virtually every employee in the industry. Many of these employees have been and will be subject to dismissal, displacement and physical relocation by these transactions.

Historically, there have been protections known as labor protective provisions which were crafted by the Civil Aeronautics Board

to provide a guarantee of just and reasonable treatment of airline employees in the public interest. These LPPs provided a reasonable and workable means of ameliorating the hardships caused by these transactions and at the same time promoted stability on the affected carrier and in the airline industry in general.

Congress clearly intended that the Department of Transportation continue to impose LPPs in merger cases. Despite this directive, it has refused to do so. History will show that basically there has been only one formula imposed for the protection of employees in a merger in similar cases, the Allegheny-Mohawk formula and its predecessors.

As Senator Adams had noted, S. 943 would require the administration to follow the clear statement of Congressional intent, that the DOT follow pre-1978 CAB precedent. In our view, this would mean that less unique circumstances in a particular case require that such conditions not be imposed, they will be imposed. The need for the imposition of the labor protection provisions utilized by the Civil Aeronautics Board for over 30 years is most acute. Unfortunately, the DOT in the face of plainly contrary Congressional intent has jettisoned the LPP doctrine.

According to the DOT, the original reason for imposing LPPs was only to prevent merger-related strikes that might disrupt air transportation. Thus, the DOT maintains that LPPs are not necessary in a deregulated environment where other carriers can quickly fill the gap when a strike terminates a competitor's service.

To adopt the policy as the DOT has done which permits the imposition of LPPs only in the circumstances of a nationwide strike caused by the refusal to impose such conditions effectively abolishes LPPs in all cases, Mr. Chairman.

Apparently the DOT's reasoning for effective discontinuing the imposition of LPPs is supposed to be derived from the views of the Civil Aeronautics Board as they existed at the time authority was transferred from the Board to the Department under the 1978 Act. Apart from providing no support and, in fact, overlooking substantial evidence to the contrary, for its theory that pre-deregulation strikes had a greater impact on the airline transportation system than post-deregulation strikes, the Department's articulated basis for abandoning the LPP doctrine is utterly capricious. It ignores that the Civil Aeronautics Board itself, not to mention also the United States Supreme Court, also premised LPPs upon consideration of equity. For example, in *United-Western Acquisition of Air Carrier Property,* 11 C.A.B. 701 (1950), the Board recognized that where the benefits to the stockholders and the public would be at the expense of the employees, as they are in merger cases, "it is only equitable that in such circumstances that the hardship should be mitigated by provisions for their (employees') benefit." 11 C.A.B. at 708. Both the need and occasion for the fair treatment of workers recognized by the CAB in the 1950s remain unchanged by deregulation. By refusing to protect employees adversely affected by mergers, acquisitions and new transfers, the DOT has callously suggested that employees turn to collective bargaining to receive LPP-type protections.

Unfortunately, however, recent experience indicates that collective bargaining does not eliminate the need for statutory LPPs.

Most carriers are unwilling to include such protections in their collective bargaining agreements. In the rare instances where carriers have agreed to LPP-type protections, they have usually done so only in the context of severe concessionary negotiations which have so weakened the basic terms and conditions of employment of the affected employees as to render LPPs virtually meaningless.

The major objection to certain carriers to LPPs continues to be their assertion that such protections entail prohibitive cost. This position, however, Mr. Chairman, appears baseless in view of the fact that some of the industry's most profitable and best managed carriers have unilaterally offered LPPs in recent merger cases. Illustrative are the U.S.Air merger and Delta/Western merger.

In any event, based on a series of court decisions suggesting that contractual LPPs may not survive the merger, contractual LPPs may well be worthless. This makes the Department's LPP policy completely disingenuous and insulting. Employees may be left with no protection at precisely the time these protections are needed most. The Department has been apprised of these court rulings but simply ignores their impact.

Against this background, it is evident that only statutory-mandated LPPs can adequately protect those employees who are economically injured with the implementation of every merger-related transaction. Recognizing this, on September 16, 1986 the House of Representatives passed legislation identical to S. 943 by an overwhelming bipartisan vote of 329 to 72. Congress now has one more opportunity to right the severe wrong done to legitimate employees' interest as a result of the 1978 Act. The Senate can do this by the enactment of S. 943.

This bill would reestablish the traditional practice of imposing conditions to protect the interests of employees who may be adversely affected by a covered business transaction. A carrier opposed to the imposition of LPPs would have a burden under S. 943 to show affirmatively that the proposed transaction would have no adverse effect on employees or that the cost of the protection would exceed the financial benefits of the transaction. Carriers would not be able to rely simply on general statements about the expected effects of the transactions or general complaints about the cost of LPPs in order to avoid their imposition. This approach is consistent with the simple truth stated in several decisions of the Civil Aeronautics Board, that it is almost impossible to predict the impact of a proposed transaction on employees.

We believe that the proposed legislation embodies good public policy. LPPs have historically responded to a serious need and have proved themselves to be a reasonable response to that need. Commercial transactions in the airline industry, particularly in this deregulated environment, have a brutal impact on the affected employees, Mr. Chairman. LPPs provide these employees with reasonable stability of employment and promote the prompt and fair resolution of potential labor problems which, unresolved, produce instability, discontent, lower productivity and, most significantly, a lower morale which can be most serious in a safety-oriented industry such as air transportation.

Thus, LPPs provide substantial benefits to the employees, carriers and the public alike. We therefore strongly urge the enactment

of S. 943, Mr. Chairman. My colleagues and I will be glad to answer any questions that you may have.

Senator FORD. Thank you very much. I have several questions I would like to ask you and your colleagues. According to Mr. Landry, who testified before you, most airline representatives say there is no need for labor protection provisions in a deregulated environment. How do you counter this?

Mr. DUBESTER. If I could, Mr. Chairman, I would say two things in response to that. First of all, when Congress passed the Airline Deregulation Act in 1978, it recognized that with a deregulated environment certain carriers would be penalized through inefficient management or for failure to perceive, perhaps, what the public really wanted in terms of service.

Congress made a determination at that time, and I would say consistent with the longstanding policy they had previously accorded with regard to airline mergers and their employees going back to 1950, that one group, namely the employees and their families, should not be the group to bear a disproportionate adverse impact as a result of, as I said, perhaps that inefficient management that may be attendant to a deregulated environment.

So I think that was partially a tradeoff in a policy determination that Congress made back in 1978 when the act was passed. One illustration of the Congressional determination that that should be done was the fact that they had provided not traditional LPPs but an employee protection package as part of the Airline Deregulation Act which, as we all know, was never really implemented and became a cruel hoax upon employees.

Senator FORD. The airlines also claim that such LPPs should be left to the collective bargaining process. What is your response to that argument?

Mr. DUBESTER. Again, if I could initially, Mr. Chairman, my response to that would be that rather than the presence of LPPs retarding the collective bargaining process, in fact what has happened in the last few years is that the absence of statutorily mandated LPPs has really perpetrated again a cruel hoax upon both the collective bargaining process and upon employees.

What we found again in those rare instances where carriers have been willing to include labor protective provisions within their collective bargaining agreements, what often happens is that when you get into a merger situation the acquiring carrier, number one, is not the carrier to honor those provisions that were in the previous contract.

Secondly, because of a number of administrative and, particularly, court decisions which have decided that certain representation rights that previously existed are on, say, the acquired carrier are extinguished. Along with that representation right going out the window, of course, the collective bargaining right would go out the window, too.

If I could just add one more point, Mr. Chairman, to clarify what I think is a misleading impression that was offered by both Mr. Scocozza and the witness from the ATA regarding the allegation that many carriers are coming forth now since deregulation and voluntarily offering LPPs as part of their agreement, it is my understanding, and I think Mr. Scocozza referred to this statistic, that

since 1978 there have been 19 merger cases that are either pending or have been consummated.

To my knowledge, the only instances where carriers have come forth and offered LPPs are the U.S.Air mergers, of which we have two recently, U.S.Air/PSA and U.S.Air/Piedmont, and in the Delta/Western case my understanding is that Delta has offered LPPs, but no agreement has been reached yet with the union representatives in that proceeding.

So of the 19 mergers that have taken place in the last approximately nine years, you have only perhaps three or four instances where LPPs have been offered.

Mr. BAILEY. I would like to expand on that, Your Honor.

Senator FORD. You do not have to give me that kind of respect. Senator will do.

Mr. BAILEY. I do want to emphasize what Mr. DuBester just said, that the presence of LPPs in contracts can really turn out to be a cruel hoax.

What has happened in several instances in these mergers is that LPPs which have been obtained at a substantial cost in terms of economic concessions by the employees seem to have disappeared at the time when they are most needed, right at the time of the merger. That is because the merging carrier has been able to really pick the survival of one collective bargaining agreement, and frequently it is not the collective bargaining agreement that contained these LPPs.

A good example would be Delta/Western, where labor protection provisions were contained in some of the Western contracts but it is not clear those protections are going to survive the merger. They were obtained at great cost, and they are about to evaporate.

The other point I would like to make is that there really did seem to be a misrepresentation about carriers coming forth voluntarily and accepting LPPs in connection with mergers. I believe today the Air Line Pilots Association is about to sign an agreement with Piedmont/U.S.Air. Other than the U.S.Air/PSA merger case, this is going to be the first time that we have obtained contractual guarantees with respect to a particular merger.

I think we have it all wrapped up. The only reason I do not say we do have it wrapped up is because I watched the 1986 World Series.

Senator FORD. Or until the fat lady sings.

Mr. BAILEY. The fact is carriers have not really come forward. Delta did come forward, but they have not signed an agreement. They have not contractually bound themselves to the employees to provide those protections. They have offered to extend, and we have no reason to believe that they will not; but the examples are very few and far between.

Senator FORD. Let us look at S. 943, which you all are supporting.

Other than the integration of seniority lists, what types of labor protection would be mandated by S. 943?

Mr. BAILEY. I believe our understanding is what were historically developed over 15 or 16 cases and were finally codified in what have become known as the Allegheny-Mohawk protections are probably the protections that we would at least hope would be ap-

plied by the Department of Transportation or whoever administers this provision.

The bill obviously allows for flexibilities in a case-by-case basis, and I think the concerns that are voiced by the carriers today where you have a failing carrier and somebody comes in and bails it out and there would be no jobs unless that acquisition took place, it may well be that full Allegheny-Mohawk protections are inappropriate. They would outweigh the benefits.

Senator FORD. Well, that gets back to another portion of Senator Adams' bill, S. 943. I think his bill would allow LPPs to be rejected if they cost more than the expected benefits of the merger.

What types of additional costs would you envision from the imposition of labor protection provisions?

Mr. BAILEY. That is an interesting question because we have been unable to really determine what great costs are. We always hear from the carriers how expensive these things are going to be, but we have never been able to identify what those costs have been in the past. We know of one arbitration case which was relatively expensive for TWA. It cost them about $1.5 million. That is the only big expense of which we are aware, that one particular case in the mid-1970s.

Generally, one thing that can be said about the cost is it is interesting that U.S. Air is coming forward in providing LPPs unilaterally because they were created by the two carriers whose names have become synonymous with LPPs, like Allegheny and Mohawk.

Also Republic, when it acquired Hughes Air West, had LPPs imposed on it in an earlier merger. Two years later it acquired Hughes Air West and asked the Department of Transportation to impose LPPs because it had a favorable experience with them.

Our suspicion is most carriers do not find these things as unpalatable as they may say. A couple of carriers clearly do but they are not going to voluntarily take LPPs, or they do not want the DOT imposing them if it is going to infringe upon their management prerogatives.

Senator FORD. Let me ask a final question which I think we ought to get in the record. Define the Allegheny-Mohawk provisions so we will have that in the record. You have referred to that several times. I think maybe we ought to define it just briefly if you can.

Mr. BAILEY. Would it be possible to submit a copy for the record, because they are extensive.

Senator FORD. Yes. We would be glad to accept that for our files.[1]

Do you all have anything else you would like to throw out here on the table, anything that you thought of?

Mr. MCGLOTTEN. The one thing I would say, Mr. Chairman—and thank you again very much for having us here before the Committee.

The interesting thing in terms of the airlines and also the associations, while they are willing to speak very, very highly of the need to provide the kind of service that is necessary for the custom-

[1] See Appendix C, Standard Allegheny-Mohawk Labor Protective provisions.

ers, I find it somewhat inconceivable that we have national policy or public policy that allows an industry to continue to thrive the way that this industry has thrived in building their companies.

But in all of the concerns of the industry, nothing has been said at all about the employees. We certainly appreciate the opportunity to come before you, and we hope that public policy in all cases will reflect a need to address the needs of the employees in our society today in not only this industry but in other industries. Certainly, this would be a start in this industry.

Senator FORD. I look forward to working with you on this very important matter.

If you will give me, then, in writing the Allegheny-Mohawk provisions I would appreciate that.

Mr. BAILEY. I will get those right up to you, Senator.

Senator FORD. Thank you, gentlemen, and this concludes our hearing.

[Whereupon, at 1:00 p.m., the hearing adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

SEDGWICK COUNTY, KS,
CLERK/APPRAISER MAPPING DEPARTMENT,
March 26, 1987.

FRANCISCO A. LORENZO,
C.E.O., Chairman, President, Texas Air, 333 Clay St., Houston, TX.

DEAR SIR; I am writing to express my outrage and displeasure with the service and treatment I received while traveling on your airline on a business trip for my employer, Sedgwick County, Kansas. I hope you take the time to read this letter and take corrective measures.

On Monday, March 16, 1987, a co-worker and I were scheduled to fly Continental Airlines from Wichita, Kansas, to Fresno, California, on a business trip. We were scheduled to leave Wichita on flight 431 at 11:15 AM arriving in Denver at 11:33 AM and connecting with flight 1719 at 12:15 PM for continued service to Fresno. We were to arrive at Fresno at 1:35 PM.

We arrived at the Wichita airport at 10 AM and checked our baggage and received our boarding passes. When we arrived at the gate we were told that flight 431 to Denver had been delayed. At 11 AM we were told that flight 431 has been cancelled and we were rescheduled on flight 411 which left Wichita approximately 12:30 PM and arrived in Denver at approximately 12:40 PM. We flew flight 1777 from Denver to Fresno and arrived in Fresno at approximately 6:30 PM.

On our return trip, Sunday, March 22, 1987, we were scheduled to fly flight 438 at 9:40 AM from Fresno and arrive in Denver at 12:40 PM. We were to continue on flight 416 leaving Denver at 1:20 PM and arrive in Wichita at 3:36 PM.

We left Oakhurst, California at 6:30 AM on the 22nd for the 50 mile drive to the Fresno Airport. We arrived at the Fresno airport at 7:45 AM, checked our luggage, and received our boarding passes. At 9 AM we were told that our flight was delayed in Stockton, Cal. and that they didn't have a jet engine starter at the airport. We were told that the aircraft has pressure bottles to start the engines but these bottles had lost their pressure and it would take a couple of hours to get them pressurized. At this time there was a United flight to Denver boarding. I asked if we could be transferred to the United flight so that we could make our connecting flight to Wichita. I was told that we had super-saver tickets and they could not transfer us to another airline.

Shortly after the United flight left, our flight from Stockton airrived. Once the aircraft was on the ground and at the gate we were told that the flight had been cancelled and we were scheduled on the next flight that would leave Fresno at 11 AM and arrive in Stockton at 11:20 AM and then leave for Denver as soon as the flight was loaded. This flight would arrive in Denver at 3:30 PM. We were rescheduled on a flight from Denver to Wichita that would arrive in Wichita at 6:30 PM.

At approximately 11 AM we were told that our flight would be delayed until 12:30 due to weather in Denver. However, while we were waiting a second United flight to Denver loaded and departed. At approximately 12:30 PM we were loaded in the aircraft and departed for Stockton. We arrived in Stockton at approximately 1 PM and were told that there would be a 1 hour delay. We exited the aircraft and when we got into the terminal we were told that the flight to Denver was cancelled. We were then scheduled to depart at 3:30 PM.

I want to point out that when we arrived at Stockton, a machine that has your airlines logo on its side, was attached to the aircraft. One of the passengers on our flight was a 15-year Airforce flight maintenance veteran and he told us that this machine was used to start jet engines. If, as we were told in Fresno, Stockton did not have one of these machines, where did this jet engine starter come from? We were also told at Stockton that our flight from Denver to Wichita was delayed in Des Moines, Iowa, and was running 1½ hours late and that we would be able to make our connections. Furthermore, we were told that the Stockton employees did not know what gate the Denver to Wichita flight would be leaving from but there would be someone from the airline at Denver to help us make our connections.

We finally departed from Stockton at 4:30 PM. On this flight we were given a snack that consisted of grapes, cheese, a stale croissant, and a cookie. We had eaten breakfast at 8 AM in Fresno and were unable to eat lunch due to the uncertainty of our flights.

We were told on the flight that there would be an individual from Continental at the gate when we left the plane to make sure we made our connecting flight. We arrived in Denver at approximately 8:30 PM. When we departed the plane, we discovered that there was no one from the airline to help us make our connecting flight. There was one Continental employee at the gate who was busy checking in passengers on a departing flight. He told us that he didn't know anything about an airline representative assigned to assist us and that he was too busy to help us. I went to the concourse and found the displays with the departing flights. We ran to the gate that was listed as the departing Wichita flight and discovered that the flight that was loading was a Kansas City flight. I asked the Continental employee at the counter where the Wichita flight was loading and he told me that it was at a gate in the opposite direction that I had come from. We ran to the gate and were told that the Wichita flight had just left. I asked if there would be another flight to Wichita that evening and the employee at the counter said that he didn't know and that I would have to go to the Service Counter. When we arrived at the Service Counter there was a long line of people ahead of us. After waiting in line at the Service Counter for over 1½ hours we were told that there were no more flights to Wichita that evening. I asked if there were any other airlines flying to Wichita that evening and was told that all flights to Wichita had left.

We were told at the Service Counter that we would be put up at the Airport Holiday Inn, given a meal chit which could be used for either our evening meal or breakfast, and that we would be scheduled on the second flight to Wichita in the morning. I asked if we could be scheduled on the first flight, and was told that it was 99% full, but, if we arrived 1 hour before the flight we would have no problem getting on standby because there were always cancellations on the first flight Monday.

We arrived at the Holiday Inn at approximately 11 PM and checked in. We were told that the restaurant was closed. We were given a room on the 5th floor. Water was leaking through the ceilings in the halls and trash cans were placed up and down the corridors to catch the water. The room was extremely cold. We turned the heat up to high and the heater would shut off before the room warmed up to 60 degrees. I slept in my cloths under the blankets to keep warm.

We arrived at the airport at 6:45 AM on Monday, March 23, 1987. We went to the gate that the Wichita flight was to depart from only to find it closed. At Approximately 7:30 a gate attendant arrived and took our tickets. At 8:15, after the regular flight passengers had been boarded, we were told that this flight had a weight restriction and that it could take no more passengers.

The second flight to Wichita was scheduled to leave at 10:45 AM. At 10:30 we were told that the flight was delayed until 11:15. At 12:15 we boarded the flight and it left for Wichita at 12:30 PM and arrived in Wichita at 2:30 PM.

In summary, I am totally dissatisfied with the treatment I received while traveling on Continental Airlines. Furthermore, in these times of budget cuts, my employer, a governmental agency, can ill afford to pay salaries out of the taxpayers' money due to your companies inability to meet schedules. Additionally, my wife was placed under a great deal of stress, not knowing what had happened to me. But, what make me the angriest is the excuses we were given for the delays. Honest answers would have been acceptable, but, vague and dishonest excuses ruin your customer's confidence in your airline.

In the future I will avoid flying Continental Airlines. I am recommending that my employer avoid booking any future business trips for their employees on Continental Airlines. I would also recommend that my employer seek compensation from Continental Airliners for lost wages. And, finally, I want you to know that I feel the way Continental treats its customers is unconscionable and should be investigated by the governmental agency which regulates airlines.

Sincerely,

DANIEL J. CONNOLLY,
Cadastral Mapping Supervisor.

ROBERTS & HOLLAND,
Washington, DC, April 9, 1987.

Hon. NANCY L. KASSEBAUM,
Subcommittee on Aviation, Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, DC.

DEAR SENATOR KASSEBAUM: As a frequent air traveller, I have had my full share of flight cancellations and delays, scheduling foul-ups, lost baggage, etc. But the deterioration in our airline service is not solely a matter of logistics resulting from a lack of traffic controllers, too many flights and similar causes. From my own experiences, it seems clear that there also is an increasingly serious problem about the treatment of the passengers when such difficulties arise. Some airlines still try to help you when you run into trouble. Others, particularly the newer ones, seem to do their best either to wash their hands of you or to screw you to serve their own ends. Last week, my wife and I received a vivid lesson in this regard from Continental Airlines and its cohort, Presidential Airways.

On Friday, we drove out to Dulles Airport from our home outside of Washington, arriving at about 7:30 A.M. to catch an 8:45 Continental flight to Sarasota to spend the weekend with friends. We booked Continental despite its uncertain reputation because it had the only non-stop early morning flight to our destination, but we were sufficiently apprehensive as to arrive at the airport much earlier than usual. The plane was the usual 15 minutes late, but we boarded without incident only to sit in the cabin for over two hours, with the heat turned off, while futile efforts were made to repair a defective window defroster. At approximately 11:00 A.M., the flight was cancelled and we were shifted as stand-by passengers to an 11:40 Presidential flight. Shortly after we arrived at the new gate, an announcement was made that that plane had a defective weather radar and we sat in the waiting area for another four hours while equally futile efforts were made to fix that defect. The Presidential flight was not cancelled until after 3:30 P.M., although it had been clear for most of the afternoon that it was not going anywhere. By that time, the only alternative that Presidential could offer the passengers was a 7:30 P.M. Tampa flight with ground transportation to Sarasota, with an estimated arrival time at their destination of after 11:00 P.M.

After the second flight cancellation, my wife and I decided not to press our luck and cut short our trip. However, while we did not get to Florida, our luggage apparently did, and although one of our bags was returned to us after a two-day wait, the other seems to have disappeared. In the end, we waited over eight hours at Dulles Airport and our friends over two hours at Sarasota Airport, for a trip that never came off. However, my wife and I are still relatively young, in good health, well-educated and reasonably affluent. Our trip was not essential, we did not have hotel or other deposits at stake, and we have been to Sarasota before and we undoubtedly will visit there again. But many of the passengers did not share our circumstances: some were elderly or infirm, some had babies or small children in tow, some were not experienced travellers, some clearly did not have much money and were stuck with nonrefundable tickets, and some were travelling on emergencies. Yet all were treated with much the same callousness and indifference by Continental and Presidential.

Item: As I understand it, while Continental and Presidential are separately owned, Continental provides marketing services to Presidential, with the latter operating those flights as the "Continental Express." When the 8:45 Continental flight was cancelled at 11:00 A.M., the 11:40 Presidential flight had only 20 or so available seats for our passenger complement of over 60, as the Continental gate attendants readily admitted. However, they refused to help any passengers seeking to look into alternatives, but warned them that Continental could not "protect" them against a higher fare if they flew with another airline, despite the fact that at that hour there were a number of other ways to get to Sarasota.

Item: Rather than try to work out with Presidential a reasonable means of allotting the available seats, Continental simply announced to those on its cancelled flight that they were being shifted to the 11:40 Presidential flight as stand-by passengers on a "first-come, first-serve" basis. The result was a mad stampede of humanity through roughly one-half mile of terminal to get from one gate to the other, the elderly and infirm hobbling along, mothers clutching their babies and dragging their small children, everyone lugging their hand baggage, in a desperate effort to get near the front of the line.

Item: When we arrived at the Presidential gate, the Continental gate attendant returned our tickets to us and disappeared. From that point on, we never saw another Continental representative, even though as the day wore on a number of the passengers demanded to meet with one. That demand was strongest when an an-

nouncement was made that there was space available on a 2:20 Presidential flight, but only for those with confirmed tickets on the 11:40 Presidential flight. The Continental passengers complained that they had been at the airport at least three hours longer but were told that we were only stand-by passengers to Presidential. My wife and I tried to speak to a responsible Continental official when we left the airport, but we were told that they were all in Houston.

Item: Neither Continental nor Presidential offered the passengers a meal or anything else other than some soda during their extended wait, even though there were some through-passengers from Cleveland who had been up since 4:00 or 5:00 A.M. and had not eaten all day. One mother with a baby and a young son took her children to a nearby cafeteria for lunch and then subsequently was told, when she inquired about food vouchers, that she could have gotten them "if she had asked." However, at about noon time I had asked a gate attendant if she at least could arrange to provide us with hot coffee and she told me it would take too long(?).

Item: The gate attendants did not reach out to the passengers to determine whether they had any special problems or needs and provided very little help when such circumstances were call to their attention. On the cancelled 8:45 Continental flight, my wife sat next to a woman who was not very worldly and apparently had not flown much before but was travelling to Sarasota to attend her mother's funeral. My wife pointed out the woman and her situation to both a Continental and a Presidential gate attendant but no one ever approached her. We subsequently observed her sitting in the Presidential waiting area with her hands over her face, crying and in an obvious state of distress, and then had to forcefully intervene to get her a special dispensation to take the 2:20 Presidential flight. Another young woman told me that a Presidential gate attendant refused to help her get in touch with her elderly grandparents who were waiting for her at Sarasota Airport because she (the attendant) was too busy to deliver personal messages.

Item: No effort was made to help the Continental passengers make alternative travel arrangements until almost 3:30 P.M., when the only available option was the 7:30 Tampa flight, even though there were plenty of alternatives earlier in the day and it had been clear for some time that the 11:40 flight would be cancelled. A group of businessmen who tried to enlist the aid of the Presidential information desk to make reservations on another airline were told that they would have to go back from the mid-field terminal where Presidential was located to the main terminal to do it themselves and would not be "protected" against a fare increase if they did so. Another passenger, who inquired about a 2:20 Tampa flight, was given the same line and told that he would have to provide his own ground transportation to Sarasota.

It does not take much insight into the financial calculus of Continental and/or Presidential to figure out what happened here, why the transfer to the 11:40 Presidential flight when it was not clear it could take all of us, why the inordinate delay in the cancellation of that plane and the obvious effort to dissuade passengers from making other arrangements, why the failure to provide meals and other amenities. Economic deregulation does not require that we allow the airlines to treat their passengers as cattle, anymore than it should permit them to fly under unsafe conditions or with unsafe equipment. The traffic problems of the airline industry may take awhile to solve but they are no excuse for allowing Continental-Presidential and their ilk to continue to dehumanize our air travel.

Sincerely,

STANLEY WEISS.

PUBLIC SERVICE COMMISSION,
STATE OF NORTH DAKOTA,
Bismarck, ND, April 24, 1987.

Hon. ERNEST F. HOLLINGS,
U.S. Committee on Commerce, Science and Transportation, U.S. Senate, Suite 125, Hart Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: I am sorry I was not able to attend your Aviation Subcommittee hearing which was held Thursday, April 23rd, at 9:30 a.m. in the Dirksen Office Building. However, I do want to send along some comments for the record.

Members of the North Dakota Public Service Commission travel a lot by air. I think there should be more air traffic directors rather than overworking a staff that is too small.

I further believe the aviation trust fund should be used much more than it is to upgrade the safety and efficiency of the airports in this country. Not spending the

money does not make sense, because the money is already being collected for aviation purposes.

Also, cancelled flights and overbookings obviously should be examined. It seems to me that in this whole area, some of the hub cities' airports are overloaded. I would urge and force the industry to work out their problems and make it easier and safer for consumers to travel by air.

Warmest regards,

BRUCE HAGEN,
Commissioner.

ASSOCIATION OF NATIONAL ADVERTISERS, INC.,
New York, NY, May 19, 1987.

Hon. WENDELL FORD,
Chairman, Subcommittee on Aviation, Committee on Commrce Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. The Subcommittee on Aviation heard testimony on April 23 on the subject of airline advertising practices. On behalf of the Association of National Advertisers (A.N.A.), which represents the majority of national and regional advertisers in the United States, I would like to express our concern with S. 1088, the "Airline Consumer Protection Powers Transfer Act of 1987," and S. 885, the "Airline Consumer Rights Act of 1987."

As you know, S. 1088 would give the Federal Trade Commission jurisdiction over airline advertising. It also would require the F.T.C. to issue regulations mandating that air carriers disclose, presumably in their advertising, the following information: 1) limitations on the availability of seats at advertised fares; 2) the carrier's policy with respect to non-refundability of unused tickets; and 3) the on-time performance record for flights for which the scheduled times of departure or arrival are included in the advertisement.

S. 885, on the other hand, requires the Secretary of Transportation to issue regultions prohibiting any commercial air carrier that operates in the United Sttes from advertising a fare for any flight at a particular price unless the carrier offers at least one-third of the seats for such flights at the advertised price, or unless the carrier, in advertising the fare, makes a general disclosure that fewer than one-third of the seats for the flight are avaiable at the advertised price on a particular day, time of day, or destination. It further requires that such advertising also disclose all restrictions with respect to advance purchase of tickets, refundability of money, minimum stay requirements, and any and all other restrictions or conditions that might apply.

Throughout its 76-year history, A.N.A. has worked to advance policies that promote the truthful, non-deceptive advertising of legal products. Our concerns with S. 1088 and S. 885 focus primarily on the impact of these regulations on advertising. If these disclosures are required in airline advertising, the cost and effectiveness of the advertising would be adversely affected.

The disclosures mandated by S. 1088 and S. 885 would burden advertising in all media, particularly outdoor advertising and advertising on radio and television. They also would effectively drown out the advertising message. The impact of these bills, therefore, is likely to be precisely the opposite of that intended by their authors. Air carriers may simply stop advertising special fare and flight information to avoid devoting the lion's share of their air time to a recitation of the mandated disclosures. The net effect will be less, not more, information going to consumers.

If you need more information on this important issue, please let us know.

Sincerely,

DEWITT F. HELM, JR.

STATEMENT OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS

INTRODUCTION

The American Association of Retired Persons (AARP), which represents more than 25 million older Americans, welcomes this opportunity to present AARP's views concerning consumer airline complaints. Elderly Americans travel more often, longer distances, and spend a greater portion of their income on travel than do other segments of society. In fact, approximately 5 million people 65 and over

traveled by air in 1985. As the result, many older consumers have suffered inconveniences and monetary loss because of current airline industry practices.

AARP interest in this issue has come about as the direct result of the numerous problems AARP members have been experiencing at the hands of the airlines. We have received, and continue to get, member mail evidencing the existence of recurring complaints, including problems with misleading advertising, unavailability of advertised fares, cancelled, delayed or over-booked flights, and unattractive senior citizen promotions. In addition, AARP provides travel related services as a member benefit, such as special tours and travel packages. This member offering is plagued by the complaint that there has been a deterioration of airline service.

AARP's 50-65 year old members include many business professionals who pay regular airfare rates and must maintain business schedules. AARP also represents those over 65 who join special commercial airline travel clubs, qualify for senior citizen discount cards or buy senior passes. Some of these older Americans still work; others are part of the leisure market. Our concerns, then, are those of a range of travelers. AARP believes that if we can help the mature traveler, in the process we are helping everyone vis-a-vis the airline industry.

In response to growing member concern in this area, AARP's National Legislative Council, in January of this year, adopted new policy calling for heightened federal involvement in air travel issues, better disclosures, more truthful advertising, and enhanced consumer redress. This policy also addresses the healthfulness and safety of airline travel by calling for air traffic safeguards; better screening, training and re-training of airline personnel; and improvement of cabin conditions. A copy of AARP's policy on airline safety is attached.

RECOMMENDATIONS

It is imperative that the federal government respond to the consumer complaints mentioned herein. AARP believes Congress should specifically require certain disclosures—records of actual departures, availability of promotional fares, restrictions—by the airlines. In the absence of such congressional involvement, the Federal Trade Commission must be given jurisdiction to regulate advertising by the airlines.

NEED FOR ADVERTISING DISCLOSURES

Increasingly, consumers are forced to rely upon advertising for the information they need to make wise purchases. The beneficial ad will include valuable information such as the name of an airline carrier, the cost of a ticket including any discount, special conditions, departure times and destinations. Most airline advertising is ethical and helpful to consumers, but some is nothing more than puffery and can mislead consumers. For instance, a lower price means less if there are harsh cancellation penalties, if refund policies for unused tickets are unclear, if there are limited seats available at the price, or if the price applies only to least desirable night flights.

In the age of airline deregulation, finding the discounted or special fares can save consumers a bundle. For most travelers, this means comparing prices by reading the ads. But when the ads contain small print or asterisked statements larded with language like "advance purchase, varying effective dates, min/max stays" the whole meaning of the ad is changed. At least one advertising code (New York BBB) states that the small print and asterisked statements in an airline advertisement should not alter the meaning of the ad itself. And with good reason. Advertising low fares without providing the consumer with some idea of his/her chances of securing one is nothing more than a come-on or teaser. Our members express disappointment that holiday periods turn out to be excluded when this restriction is not mentioned in ads.

Unfortunately, the bewilderment of the consumer can be confounded by the confusion in the industry itself. Take the case of Dr. John C. Esposito of Springfield, PA. DR. Esposito, an AARP member, travels to Florida regularly and cuts costs by trying to buy cheaper fares. He saw an Eastern ad for a special fare of $119 per person and called immediately to find our how to secure these tickets. He was told by an airline reservation clerk that a 30 day advance purchase would be required. However, when he went to buy the tickets, within the 30 day period, he was told by a different clerk that that price was no longer in effect. Instead, he had to pay a fare of $165 per person.

At a minimum, airline ads should give consumers some indication of the consumers potential for actually securing a reduced fare. Unless the fine print merely supplements the message of the ad, the ad can be considered misleading.

In addition, to be accurate, an ad should say more than merely the time of departure. With more than 400,000 airline delays last year, the traveler, including business travelers are subject to a game of airline schedule roulette. Consumers currently have no way of knowing what an airline's performance is. Instead he or she is forced to rely on ad's statement that flights leave on the hour. The airline, however, knows full well that there is an excellent chance, particularly at peak flying times, that the fight will be delayed going, coming or both.

AARP is aware that some delays are caused by essential repairs. We applaud a concern for safety that will not allow a plane to fly when a defect is spotted. We accept that waiting on the ground is safer and more energy saving than circling over the destination airport. However, airlines have complained against each other that listed arrival times are considerably shorter than the airline knows it can achieve. This amounts to consumer deception and unfair competition.

SPECIAL SALES PITCHES TO AND NEEDS OF OLDER TRAVELERS

Most major airlines have instituted special marketing programs for those in their sixties or older: for instance, Continental's Golden Travelers Club, American Airlines' Senior SAAvers Club, and United Airlines' Silver Wings Plus. Older people have taken advantage of these programs. In some instances, airlines were swamped with more applications than expected. Some older consumers use these special senior discounts and other reduced price offerings to help themselves budget their fixed incomes.

Older travelers are often willing to plan ahead or buy advance tickets. Based on letters we've received, it appears that they are proud of their responsible behavior in notifying airlines if they will not be using a reservation. But they do not believe they are rewarded for their efforts either by the cheapest fares or by truly guaranteed flights or seat assignments. In fact, penalties are seen as unfair punishments and as one-sided in that airlines pay no such fees to inconvenienced travelers. One consumer pointed out to a major airline that even if "the reservation is changed or cancelled, you still have had the customer's money invested." The traveler, on the other hand, may lose time or miss a connecting flight when the airline makes a last minute cancellation for mechanical problems or to combine flights that are not full.

The special fixed-price coupons, year-long passes, and other marketing ploys to capture the senior market have proven to be of mixed value, according to our members and to travel expert Arthur Frommer. He writes, "The introduction of radical-· reduced MaxSaver fares and the continuation of Super Saver fares lessens the worth of those programs considerably." One Florida couple wrote AARP to say that they paid $2400 but had been able to make only a one-way trip to Boston in spite of attempts to travel to various other points. Other complaints allege that flights to popular places, such as Las Vegas, are often filled, especially daytime offerings. "I have tried to get the 45 day advanced reservation to Hawaii and Alaska and have been told that this is impossible for months," states one older consumer from Illinois.

While the mature traveler is courted by the airlines to fill empty seats on the less popular flights, the special needs of the older person are not necessarily met by the airlines, according to the complaints AARP is receiving. A woman from Maryland asked us to "forward this letter to the proper committee" in order to prevent "arbitrary cancellations of airlines' flights."

"For the seniors who are dropped by their cabs at the terminals where there are no sky caps available, there is hardship. . . . I waited on a long line having to push my luggage and carrying my nylon handbag loaded with my life-supporting medications. When I arrived at the head of the line, I was informed . . . that my flight was cancelled and they could not check in my luggage. They directed me inside to *Airlines where there was another line. Need I go on?"

Some cancellations are due to weather, but the hardship can be great. A Massachusetts couple was left "to shift for ourselves, at midnight, in a town where we are strangers, and with absolutely no offer of assistance, monetary or otherwise."

Older people are concerned about emergencies. Some airlines honor tickets if there is a medical emergency, especially with a doctor's confirmation. But many discounts do not apply in emergency situations such as funerals where advance reservations are impossible or are disputed in cases where an illness or surgery requires cancellation of the return trip at the scheduled time. If an airline will "honor tickets previously purchased," then all airline "representatives should be so informed so that other persons would not be put through the aggravation that I was while recuperating from major surgery," argues a travel club member.

AARP is not asking for special privileges for older flyers. We hope our examples reveal the problems that many consumers are experiencing since de-regulation and the special difficulties that the current turmoil creates for older Americans.

CONCLUSION

AARP appreciates this opportunity to comment for the record. We trust Congress will act quickly to protect consumers against current airline industry abuses. AARP stands ready to assist the committee in securing this goal.

B. Health, safety, and consumer protections for airline passengers

Elderly persons are an important market segment in the travel industry. Data indicates that elderly Americans travel more often, travel longer distances, and spend a greater portion of their income on travel than do other segments of society. According to a recent study by the Conference Board, elderly persons spend approximately 30% more of their discretionary income on travel than do younger people. In addition, the Conference Board found that persons age 50–64, who represent 18% of the U.S. population, dominate the luxury travel market.

It is not surprising, therefore, that older Americans should be concerned about issues relating to the healthfulness and safety, and accessibility of airline travel. Elderly passengers, as consumers of airline services, are also concerned about restrictions on discounted tickets to the limit of liability for lost or damaged luggage. They are also concerned about airport services such as the reliability and availability of assistance to special needs passengers.

While airline travel on a per-passenger mile basis is about as safe as bus or train travel, AARP is concerned that deregulation of the industry may have narrowed the margin of safety. Delayed or minimal maintenance, crowded runways, inexperienced pilots, and inadequate training of personnel or equipment both on board the aircraft and on the ground can affect the safety and well-being of all airline passengers. Although deregulation has resulted in needed price competition among carriers, economic pressures have made airlines less willing to exceed minimal safety requirements and have discouraged the installation of crash worthy technology into new and existing aircrafts which can help to protect passengers in survivable crashes. Thus, greater use of crash worthiness technologies, such as energy absorbing seats, may improve crash survivability.

There are also ongoing consumer concerns with respect to cabin conditions, such as the supply of safe, fresh air and adequate cabin pressure. For many older people, who already face gradual hearing loss, the threat of sudden, traumatic hearing loss as a result of improper cabin pressurization is particularly worrisome. In addition, other health impairments, such as recent heart attack or abdominal surgery, may also pose a health threat to airline travelers, who are generally not informed of these risks by airline personnel.

Passengers also need reasurance that regular and commuter airlines give proper training to their personnel (including CPR training) and that work rules for both in-flight and ground personnel do not jeopardize safety. Airlines should also carry appropriate equipment in case of medical emergencies.

Air safety is also affected by the performance level of commercial and small aircraft pilots, as well as by the use of safety equipment in General Aviation.

Finally, passengers must also be guaranteed that the federal regulatory agencies governing airline travel and safety are effectively performing their mandated functions and that the Air Traffic Control System is staffed with appropriately trained personnel, with access to state-of-the-art equipment.

Association Position

The Association believes that the problems of airline health and safety require a variety of responses. Some of these include:

1. Better monitoring of airlines and the Air Traffic Control System for compliance with safety standards (including the employment of adequate numbers of air traffic controllers and safety inspectors);
2. Better screening and training or retraining of airline and ground personnel, together with improvements in equipment and service both in-flight and on the ground;
3. Full disclosure of any restrictions imposed by the airline relating to the carriage of the passenger or his/her luggage;
4. Provision of better cabin environments (including adequate medical equipment, adequate supplies of fresh clean air, and use of crash worthiness technologies throughout the aircraft whenever possible);

5. Greater disclosure of information to passengers regarding health risks of flying. Such disclosures do not excuse airlines from their responsibilities to all passengers;

6. Adequate enforcement of anti-trust laws to prevent undue restrictions on competition among the carriers and among computer reservation systems;

7. Ensuring funds that have been obtained through passenger ticket and fuel taxes are spent for aviation safety improvements,

8. Ensuring that delays and cancellations are reduced through better routine maintenance and air traffic control both in the air and on the ground.

STATEMENT OF AMERICA WEST AIRLINES, INC.

America West Airlines, Inc., a new entrant airline that began operations a little over 3-½ years ago, appreciates the opportunity to submit this statement discussing transfer of the responsibility for evaluating airline mergers from the Department of Transportation to the Department of Justice.

By way of background, America West began operations as a new entrant airline in August 1983 with three Boeing 737-200 aircraft operating to and from our Phoenix hub and the cities of Los Angeles, Kansas City, Colorado Springs and Wichita. Since that time, we have grown dramatically, now serving a total of 37 cities in the Midwest, Southwest, Northwest, Canada and California from our Phoenix and newly established Las Vegas hubs, operating a total of 49 Boeing 737 and three de Havilland Dash 8 aircraft. We will be taking delivery of six Boeing 757 aircraft in May and June of this year and will begin new service to Chicago's Hare Airport at that time, with service to New York and Washington being initiated on July 1. We now have a total of over 5,000 employees, almost all of whom own stock in our company and participate in our employee profit-sharing plan. As you can see, America West has come a very long way in a relatively short time, and we intend to continue to expand our operations over the next several years—which brings us, of course, to the subject of today's hearings, consideration of airline mergers by the federal government.

THE DEREGULATION ACT AND AIRLINE MERGERS

As all of you know, the Airline Deregulation Act made several significant changes in the manner in which air transportation was to be regulated in the United States. Among the most important of those changes was the revision of the Federal Aviation Act's so called "public interest/public convenience and necessity" test—the touchstone for all regulation under the Act—so as to place increased reliance on competition to establish the nation's air transportation system. More specifically, the Congress required the Civil Aeronautics Board initially and now the Transportation Department in the exercise of its regulatory functions—

to prevent unfair, deceptive, predatory, or anticompetitive practices in air transportation;

to avoid unreasonable industry concentration, excessive market domination, and monopoly power and other conditions that would tend to allow one or more air carriers to unreasonably increase prices, reduce services, or exclude competition in air transportation;

to provide for the availability of a variety of adequate, economic, efficient, and low-priced services by air carriers; and

to encourage entry into air transportation markets by new air carriers, entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.

This pro-competitive theme was also carried over by the Congress into Section 408 of the Act, which provides the framework for present D.O.T. consideration of mergers and acquisitions. Under that provision, it is unlawful, without prior approval, for any air carrier to acquire control of another air carrier in any manner whatsover, and the statute contains a rebuttable presumption that ownership of 10% or more of the voting securities or capital of an air carrier constitutes control. And, the Act establishes two standards for the required approval of such a transaction—an antitrust standard and a public interest standard.

Turning initially to the antitrust standard, the inescapable intent of Congress in rewriting the statute was to give antitrust considerations top priority in Transportation Department consideration of airline merger cases. Since the passage of the Deregulation Act, not only transactions which would result in fully achievable monopolies but also those which are in furtherance of a combination of a conspiracy to monopolize or to attempt to monopolize are absolutely barred. And, under the new

test, a merger which would violate Section 7 of the Clayton Act (*i.e.*, lessen competition substantially in any region of the United States) may not be approved by the Department unless it finds *both* that the anticompetitive effects are outweighed in the public interest by the probable benefits of the transaction in meeting significant transportation convenience and needs of the public and that such significant needs may not be satisfied by a reasonaly available alternative having materially less anticompetitive effects.

The second test, the so-called "public interest" test, provides that the Transportation Department is to approve an acquisition of control unless it finds the transaction to be inconsistent with the public interest.

The Department is also authorized to impose, if it determines to approve a proposed transaction, such terms and conditions as it finds just and reasonable and such modifications as it believes appropriate.

Finally, the Department is authorized to grant an exemption from these requirements if it is determined that such an exemption is, once again, in the public interest.

America West would also point out, parenthetically, that, by operation of the Justice Department/Federal Trade Commission regulations, the otherwise applicable Hart-Scott-Rodino filing requirements are met simply by contemporaneously filing a copy of a complete D.O.T. application with the Justice Department and the Federal Trade Commission.

In summary, the regulatory structure developed by the Congress was and is quite sound, and its intent as to how that structure was to be managed was, in our view, quite clear. America West is concerned, however, that the manner in which these provisions have been implemented over the past few years may, if not modified, seriously compromise the industry's ability to achieve the Deregulation Act's important pro-competitive goals in the future.

IMPLEMENTATION OF, AND OPERATIONS UNDER, THE DEREGULATION ACT IN GENERAL AND THE MERGER PROVISIONS IN PARTICULAR

On an overall basis, I believe deregulation has—at least until recently—been quite successful. We have had new carriers, including America West, enter the national air transportation system, service levels have increased substantially, and, perhaps most importantly, fare levels have dropped dramatically, thus permitting ever greater numbers of the American public to take advantage of that system. This is not to say that there have not been problems, such as service to small- and medium-sized communities which still needs to be improved, but, in general, I think it is fair to say that the American public has benefitted significantly from airline deregulation.

There are, however, several storm clouds on the horizon that must be addressed if the benefits of deregulation envisioned by Congress will continue to be available in the future.

First and foremost, the anti-competitive effects of the computer reservation systems, which are presently dominated by American, United, and, to a lesser extent, by Delta, Texas Air and T.W.A.-Northwest, must be addressed as soon as possible. The major's CRS systems are at the root of the unreasonable industry concentration, excessive market domination, and monopoly power that we face today, and will lead to conditions that will allow those large carriers to increase prices, reduce services and reduce competition. Moreover, it is these systems and their inherent biases that seriously impede entry into new markets and compromise the ability of small carriers to grow larger. The Transportation Department, but only at the urging of the Congress, has finally initiated an investigation of these systems, and it is critically important that the information being obtained in that investigation be analyzed and new regulations developed to eliminate the serious competitive problems raised by the operation of those systems.

Second, with the increased consolidation and concentration that has occurred over the past two years (a subject which we will discuss in greater detail shortly), the problems of airport access—be they in the form of gates, slots, ticket counter space or restricted access to an airport in the guise of noise regulation—have increased substantially, thus seriously compromising the ability of airlines to enter new markets.

Finally, there is the question of the constraints imposed by the existing air traffic control system, which has, quite simply, not kept pace with the demands placed upon it by deregulation. And, it is important to recognize that the principal burdens resulting from the inadequacies of that system fall upon new entrant airlines that have not yet fully developed their route systems, particularly at the capacity con-

trolled airports where incumbents have a significant competitive advantage because of their "grandfathered" ownership of operating slots.

While these problems are, in America West's view, capable of solution through intelligent D.O.T. intervention to assure that the marketplace can function effectively, the incredible concentration and consolidation that D.O.T. has permitted to occur in the two years since it assumed responsibility for administration of the merger provisions of the Federal Aviation Act has greatly exacerbated the impact of these problems on the air transportation system, and may well threaten its long-term viability.

Since D.O.T. assumed responsibility for Section 408 of the Act on January 1, 1985, there have been a total of 13 mergers or acquisitions of certificated carriers presented to the Department, either for approval or exemption from the need for approval, and, in every instance, the transaction was permitted to go forward by D.O.T. During this period, the national air transportation system has lost, as independent operating airlines, carriers such as Eastern, Muse Air, Frontier, Republic, Empire, Ozark, Jet America, People Express, Western, P.S.A., AirCal, Horizon, and (if approved) Piedmont. These were mostly, of course, the very "small air carriers" that Congress fully expected would provide an ongoing competitive spur to the carriers that have acquired them, and that Congress directed be strengthened by D.O.T.

And, now what are we left with? As set forth in Table I, we have, as a consequence of D.O.T.'s actions, entered the age of the "mega-carrier" in which Texas Air, United, American, Delta, Northwest and USAir/Piedmont (if approved) will account for over 82% of the total system revenue passenger miles in the United States (January 1987 traffic). In 1986, the top six carriers had only 62.19% of the system rpms (once again based on January traffic). Moreover, from all appearances, both Pan American and T.W.A. are on the market, presumably to be purchased by one or more of these mega-carriers, thus potentially eliminating two other carriers and further increasing the mega-carriers' market shares (up to 95%).

TABLE I—MAJOR AND NATIONAL CARRIERS—MARKET SHARES

1987 Carrier/Carrier group	Revenue passenger miles (percent)			1985–1986 Carrier/Carrier group
	1987	1986	1985	
American-Air Cal	14.44	14.27	12.92	American.
United	17.02	12.55	15.00	United.
Texas Air Group [1]	18.32	10.43	10.59	Eastern.
Delta-Western	12.04	8.93	9.19	Delta.
Pan Am	6.49	8.49	8.85	Pan Am.
TWA–Ozark	7.73	7.52	8.46	TWA.
Northwest-Republic	10.02	6.16	6.49	Northwest.
	.....	5.50	4.48	Continental.
	.....	3.57	2.87	People Express.
	.....	3.33	2.70	Republic.
	.....	3.09	3.39	Western.
US Air-Piedmont-PSA	7.13	2.93	2.61	US Air.
	.....	2.63	2.22	Piedmont.
Southwest-Transtar	2.22	1.79	1.55	Southwest.
	.....	1.15	.97	PSA.
World [2]	.....	1.09	1.30	World.
	.....	1.04	1.46	Frontier.
	.....	.91	.95	Ozark.
America West	1.31	.81	.61	America West.
Alaska-Jet America	.92	.75	.62	Alaska.
	.....	.57	.52	Aircal.
Braniff	.81	.56	.59	Braniff.
Midway	.60	.56	.47	Midway.
Hawaiian	.74	.53	.17	Hawaiian.
	.....	.51	.31	New York Air.
	.....	.....	.32	Transtar.
	.....	.25	.29	Jet America.
Aloha	.12	.11	.12	Aloha.
Air Wisconsin [3]	.08	.....	.....	Air Wisconsin.

[1] Does not include People Express and N.Y. Air, which carried 3.2% of the industry rpms in 1986.
[2] World has ceased scheduled operations.
[3] Air Wisconsin now qualifies as a national carrier in the D.O.T. reporting system.

To make matters worse competitively, the five largest carrier groups, as may be seen from Table II, own the five computer reservation systems that are in the marketplace and thus control over 86% of the market:

TABLE II

Carrier/Carrier Group	System	Market Share (RPM)
American-Aircal/Pan Am	Sabre	20.93
Tac Network	Sodas	18.32
TWA-Ozark/N.W.-Republic	Pars	17.75
United	Apollo	17.02
Delta-Western	Datas II	12.04

While we would not burden you with a detailed discussion of all of these mergers/acquisitions, we do believe that it is useful to discuss briefly four of these proceedings, United-Pan American, Southwest-Muse, TWA-Ozark, and Northwest-Republic. It was these proceedings that, in our view, created the impetus and regulatory environment for the other mergers/acquisitions. We would also like to suggest areas for reform in the future.

Turning initially to United-Pan American, D.O.T., by its decision, sent a clear message to the Industry that the merger route was open to even the largest of carriers, which, of course, led to the Northwest acquistion of Republic, the Texas Air purchase of Eastern (and, then, People Express-Frontier), the acquisition of AirCal by American, and the proposed acquisition of USAir/Piedmont By T.W.A.

In Southwest-Muse, the D.O.T. (notwithstanding the urgings of the Justice Department to decide the case on narrow, failing business doctrine grounds, because, in Justice's view, the merger raised clear competitive issues) gratuitously went beyond the failing business doctrine and, in essence, "wrote around" the serious competitive concerns raised by the Justice Department. And it was the very precedents developed in Southwest-Muse that were relied upon by the D.O.T. when it approved both the T.W.A.-Ozark and Northwest-Republic cases, both of which the Justice Department vigorously opposed.

In short, the D.O.T., by considering these cases in a vacuum and with no long-term notion as to how the industry might ultimately look if it were to approve these mergers/acquistion, has left us, in a few short years, with an incredibly concentrated and oligopolistic industry. And, while we do not think it is too late to address the situation, it is clear that several steps must be taken now to assure that the situation does not get any worse in the future.

First, while the transfer of responsibility for airline mergers from the Transportation to the Justice Department has a certain appeal because Justice has demonstrated a more vigorous interest in evaluating the competitive effects of airline mergers over the past few years than has the Transportation Department, we have several concerns with such an approach and, therefore, urge the Committee to consider this proposed transfer quite carefully:

Initially, it is critically important to recall that, while Justice has been more vigorous than D.O.T. in its analysis of certain airline mergers, the current Justice Department certainly does not have the reputation of vigorously challenging mergers and acquisitions in other industries in the context of its Hart-Scott-Rodino and general antitrust enforcement responsibilities.

Moreover, Justice has itself acquiesced in many of the airline mergers that have led to the increased concentration in the industry, and it is important to note that the Justice Department, although it participated vigorously in several of the airline cases, never took any of the D.O.T. decisions to court, as it did, for example in challenging the anti-competitive capacity decisions of the Civil Aeronautics Board in the mid-1970's.

Furthermore, given the short time periods and essentially secretive processes of the Hart-Scott-Rodino Act, it is not at all clear that there will be a meaningful opportunity for deliberative consideration at Justice, particularly given this Justice Department's apparent view that "big is better."

Finally, and in light of the excessive concentration that has already occurred and the need for the analysis in future airline merger cases to go beyond mere competitive concerns so as to consider important public interest and national transportation policy matters, we question whether the Justice Department, as opposed to the

Transportation Department, is the proper agency to be making those decisions. We do believe, however, that it would be most useful for the Justice Department to play a greater role in D.O.T. proceedings in order that the always important competitive considerations are properly evaluated by D.O.T

Second, on the assumption that the Section 408 authority is to remain at the Transportation Department, it is critically important that the Congress make it abundantly clear to the Transportation Department that its implementation of the merger/acquisition provisions over the past two years has *not* been consistent with the intent of Congress in passing the Airline Deregulation Act. In this regard, one often gets the impression that D.O.T. believes that what it has been doing in the merger/acquisition area is consistent with that Congressional intent, and D.O.T. must be disabused of that notion from this day forward.

Third, given the excessive concentration that D.O.T. has permitted to occur over the past two years, going from an unconcentrated to a clearly oligopolistic industry, the D.O.T. analysis in future merger/acquisition cases must go beyond mere competitive impacts (which themselves must now be more vigorous) and consider the important public interest and national transportation policy concerns that will be raised by *any* future acquisitions. In this regard, the likelihood that there will be any new certificated air carriers in the forseeable future is at best remote, since, in my judgment, Wall Street has closed the door on new startup airlines, particularly after the demise of People Express. Thus, D.O.T. must carefully evaluate *all* future airline acquisitions, particularly those involving the five remaining "small" certificated carriers, Alaska, America West, Braniff, Midway, and Southwest, which can provide a meaningful competitive spur to the mega-carriers, as was the original intent of Congress in crafting the Deregulation Act.

Fourth, the only manner in which these now critically important competitive, public interest, and national transportation policy judgments can, in our view, be made in the future is by means of on-the-record hearings in which the Department has (1) the benefit of the time and thoughtful consideration given by an Administrative Law Judge who has developed a full record on all of these matters, and (2) the opportunity for review of that decision at the highest levels of the Department. The use of show cause or exemption procedures, which result essentially in D.O.T. staff decisions based on what the staff "believes" the decision makers may think about a particular case, should, in our view, be utilized for merger/acquisition cases in only the rarest of circumstances. And, the Congress should make it abundantly clear to the Department that it must abandon its rulemaking proceeding of last May in which it proposed, among other things, to permit applicants to consummate a merger prior to a final decision being issued by the D.O.T. Withdrawal of that rulemaking is particularly important for the reason that the D.O.T. and the airlines appear to be operating on the assumption that certain of the proposals contained therein are somehow already in effect.

Fifth, we also believe that the Congress should send a clear signal to the Department that its policy with respect to the use of voting trusts in merger proceedings must be revisited. As the Justice Department has pointed out to the Transportation Department on several occasions (the most recent of which was in connection with the USAir-Piedmont voting trust), a company's purchase of a substantial amount of a competitor's stock can have anticompetitive effects even if the purchaser cannot vote its shares. If the management of the companies perceive that the transfer of ownership makes the ultimate consummation of the acquisition more likely, they may cease to compete agressively against one another. In addition, the acquiring company may hold back from competing aggressively if to do so would diminish the value of the acquired company's stock that it owns. Furthermore, if the acquisition is ultimately disapproved, the existence of a large block of shares that must be divested may weaken the viability of the acquired company. Lastly, these risks to competition, as the Justice Department has pointed out, increase in proportion to the amount of stock that a company is allowed to acquire.

Finally, in light of the events of the last several months concerning airline mergers, there must be ongoing Congressional oversight to assure that the pro-competitive intent is, in fact, carried out by the Department as it considers such cases in the future. In this regard, Mr. Chairman, this Committee is to be commended for conducting these hearings, and we would urge even increased vigilance in the future.

We appreciate the opportunity to provide this statement, and would be pleased to respond to any questions that the Members or Committee Staff have with respect to the matters discussed herein.

STATEMENT OF ROGER B. ANDEWELT, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee:

On behalf of the Department of Justice, I appreciate the opportunity to submit for the record our views on S. 724, and mergers and competition in the airline industry. For the reasons that will be explained, we support early sunset of the Department of Transportation's existing authority with respect to mergers and interlocking relationships in the airline industry. We also support early sunset of DOT's authority to approve and immunize from the antitrust laws domestic intercarrier agreements.

Before addressing this legislation, I believe it would be helpful to discuss generally the competitive impact of recent mergers and acquisitions in the airline industry. The airline industry has experienced significant restructuring since enactment of the Airline Deregulation Act in 1978, and this restructuring has been particularly evident during the past year and a half. In our view, this is not a matter that necessarily should cause undue concern. The recent mergers and acquisitions have not raised the specter of a significant and pervasive threat to competition in airline markets generally in this country and may actually have enhanced competition in what are already highly competitive markets.

That airline markets are now characterized by multifaceted competition is in sharp contrast to the state of the industry prior to the Airline Deregulation Act. Before 1978, the regulatory climate in which the airline industry operated was one in which competition on pricing and entry was severly restricted. As a result, consumers, even on very popular routes, typically has no pricing options. The story of excessive, inefficient service competition during that period is well known.[1]

The Airline Deregulation Act sparked dramatic changes in the industry, particularly in the manner in which domestic airlines provided service. Airlines generally took advantage of the opportunities afforded them under the Act by radically altering their routes, marketing practices and pricing structures in order to attract and serve customers.

One structural change that resulted from this competitive environment was the airlines' creation of hub and spoke systems. The airline industry, like other transportation industries, discovered that there were often tremendous efficiencies from establishing networks; airlines realized these gains by creating hubs at one or more airports. The airlines have found that by scheduling flights at those hub airports in banks—a number of flights come into a hub airport within a short period of time and a number leave a short time later—they are able to offer passengers from many origins one-stop flights to many destinations. This method of scheduling inbound and out bound flights has enabled carriers to make efficient use of their facilities and to provide service on many previously underserved routes out of the hub airport.

In addition, hub carriers have been affiliating with commuter carriers in many cities to serve smaller markets on a efficient scale, and several have developed multiple hub systems to provide better regional service. Thus, with the devleopment of hub and spoke systems—a process which has historically entailed a substantial investment of time, planning and facilities development on the part of the hubbing carrier—carriers have grown from local to regional or regional to national as they offer passengers an increasing array of destinations on a single carrier.

While the journey has not been without some turbulence, the evidence appears overwhelming that consumers have benefited tremendously from free and open competition among airline carriers. Today many more people are flying, more and new service is being offered, and passengers have available to them a wide range of low-price options. People who were previously not in a position to afford air transportation are now enjoying the benefits of air travel to the far reaches of this country. All of this has been achieved by freeing the airlines from economic regulation.[2]

Unrelated to deregulation, but also having a profound effect on the industry during the last ten years, has been the development of computer reservation systems (CRS). As this Subcommittee knows, the Department has investigated these systems in the past and participated in regulatory proceedings to eliminate anticom-

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[1] *See, e.g.*, George W. Douglas and James C. Miller III, Economic Regulation of Domestic Air Transport: Theory and Policy (Brookings, 1974); E.E. Bailey, D.R. Graham and D.P. Kaplan, Deregulating the Airlines (Cambridge, Massachusetts: MIT Press, 1985).

[2] Steven Morrison and Clifford Winston, The Economic Effect of Airline a Deregulation (Brookings, 1986). For example, the Brookings study concluded that while the airlines have ceased to serve some locations since deregulation, an even larger number of locations would have lost service if the industry had not been deregulated.

petitive aspects of these systems.[3] On the positive side, these systems have increased the ability of the carreirs to respond more quickly to changes in the forces of supply and demand. Many of the newer, but now commonplace discount programs would be difficult if not impossible to market through retailers without CRSs. As a result, more passengers buy tickets and consumer welfare is enhanced.

The competitive process is working, and we certainly want to maintain this competitive structure. This leads to the question: Will the spate of mergers that has occurred in the last year undermine these gains? Our answer to this question is: Generally, no.

The airline industry remains quite competitive, and we expect that it will remain so for the foreseeable future, provided that existing merger law is vigorously enforced. The mergers that have taken place have changed the participants in manay markets but, with the possible exception of a comparativelay few markets, have not significantly reduced competition in any markets and have likely enhanced competition in many.

To understand the conclusion that competition has generally not been impaired by these mergers, it is necessary to consider briefly how we Mr. Speaker, at the Department of Justice look at mergers and, in particular, the factors we believe are important in analyzing an airline merger.

At the Department, we begin with the premise that the airline industry is similar to other industries for the purpose of merger analysis. Thus, as in other industries, we consider whether substantial competition between the merging parties will be eliminated by a merger, and whether that elimination will increase the likelihood that prices to consumers will rise significantly after the merger. Such an analysis is necessary because airline mergers and acquisitions are governed by Section 408 of the Federal Aviation Act,[4] which emobodies essentially the same antitrust standard as is contained in the Clayton Act. The basic difference in the antitrust evaluation of the issues is that the Department of Transportation, rather than a federal court, now has decision-making authority with respect to mergers in this industry. Accordingly, under the current system of review, the Department of Justice evaluates each airline merger and presents its views to DOT, either by participation in a DOT proceeding or by letter, where that is deemed appropriate.

Our analysis of airline mergers is derived from the U.S. Department of Justice *Merger Guidelines*.[5] The *Guidelines* describe how we apply the fundamental principles of Section 7 of the Clayton Act and Section 1 of the Sherman Act to mergers.

The key initial steps in this analysis are the definition of one or more relevant markets and the identification of the competitors in those markets. We include in the market any firm currently providing the product or service provided by the parties to the merger, as well as those firms providing substitute products or services to which consumers would turn in response to a "small but significant, nontransitory increase in price." We also include in the market other firms that have existing specific assets that could be easily and economically used to provide the relevant product or service within one year in response to a "small but significant, nontransitory increase in price."

After defining the market, and identifying the competitors in it, we determine whether the market is concentrated and by how much the merger would increase concentration. If the market is concentrated, and the merger would significantly increase concentration, we then consider other relevant factors that indicate whether the merger carries a substantial probability of significantly increasing unilateral or collective market power—that is, the ability to raise prices. For example, we consider the likelihood that entry by firms not currently in the market is sufficiently easy to prevent the firms remaining in the market after the merger from raising prices.

In applying the *Guidelines* to airline mergers, we have generally concluded that the proper relevant markets are city-pair routes on which the merging carriers are competitors, for example, flights between Washington, D.C. and San Francisco, California or between Atlanta, Georgia and Nashville, Tennessee. If a city-pair market is concentrated and the merger would significantly increase concentration in that city pair, then we consider whether other factors preclude (or facilitate) the exercise of market power in that market. Critical to this part of the analysis are issues such as whether, assuming the merger were to occur, the remaining participants in the market would be able to establish successfully a cartel arrangement, the benefits to

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[3] *See* Report of the Department of Justice to Congress on the Airline Computer Reservation System Industry (1985); Comments of the Department of Justice to the Civil Aeronautics Board, Docket 42410, August 13, 1984.

[4] 49 U.S.C. § 1378.

[5] 49 *Fed. Reg.* 26,823 (1984).

be gained by any individual member from "cheating" on such an arrangement by offering lower prices, and the likelihood of detection by the competitors of any such cheating. Another significant issue is the ease with which new carriers can enter the city-pair market or with which existing fringe carriers can economically expand service.

With respect to entry, some economists thought that it could be presumed that after deregulation all domestic airline markets would be highly, if not perfectly, contestable, *i.e.*, that the threat of entry would always prevent anticompetitive price increases. The notion was that planes can quickly and efficiently be shifted from one city-pair route to another and that firms not serving a particular city-pair route would shift to serving the route if prices increased above competitive levels on that route.

Our experience has led us to the conclusion, however, that this is not always the case. At least in some markets, "hit-and-run" entry is not as likely as the contestability theory predicts.

First, in at least certain airline markets, entry is not as costless as simply shifting a plane onto the route, but instead involves substantial sunk costs—*i.e.*, investments that cannot be recouped if the firm later decides to exit the market. For example, substantial investments in such things as advertising and ground facilities are necessary to establish hubs, and under certain circumstances airlines may not be able to recoup their investment if they decide to terminate operations at a hub airport. Second, for "hit-and-run" entry to be profitable, under the contestability theory, the incumbent must not be able to respond quickly to the entrant's pricing initiative. By contrast, incumbent airlines are often able to respond almost instantaneously to a new entrant by lowering their prices.

Thus, the likelihood of new entry into a market in which a merger has eliminated a competitor is essentially a factual issue, the answer to which can vary from case to case. Moreover, the time required for new carriers to enter a market is relevant. If, for example, entry into markets by constructing a new hub is not impossible but would take an extended period of time (two years, for example), the interim loss of consumer welfare can be substantial and should not be tolerated.

The inquiry into entry should focus on the factors that an airline considering entry into the affected market would take into account when making its decision. These include such factors as constraints on the availability of take-off and landing rights (slots) or ground facilities at certain airports, the need to construct a hub in order to compete effectively, and governmental restrictions on international flights.

Using the *Guidelines'* analytical approach to mergers, the Department of Justice opposed DOT approval of three mergers that we concluded were anticompetitive: Northwest/Republic, TWA/Ozark, and United's acquisition of Pan American's Pacific Division. We also pointed out that certain aspects of Texas Air's acquisition of Eastern might have been anticompetitive had Texas Air not agreed to sell to Pan Am sufficient gates and slots at National and LaGuardia Airports to enable Pan Am to offer competing "shuttle" service on the Boston—LaGuardia—National routes. With respect to these mergers, DOT approved the first three and ordered Texas Air to sell off additional slots and gates before approving the Texas Air/Eastern merger.

With respect to two of the three mergers that DOT approved over our objection, our differences were due to different conclusions concerning the likelihood of new entry. In the case of the Northwest/Republic and TWA/Ozark mergers, we concluded that for several reasons, entry was unlikely to prevent the merger from having anticompetitive effects on a number of city-pair markets. In the absence of finding physical entry barriers, however, DOT concluded that entry was sufficiently easy to ensure that these two mergers would not have anticompetitive effects. The entry issue is a very complex one; it involves difficult predictions as to future actions, as to which reasonable men and women can disagree.

In the *Pacific Division* case, both agencies agreed that entry would be difficult, but we different as to the level of concentration that indicates market power in the airline industry.

Notwithstanding our differences with DOT's findings in these three cases, we do not believe there is cause for concern about the current state of competition generally in the industry. The mergers on which we disagreed with DOT involved a limited number of city-pair markets. Many other airline markets changed significantly due to mergers but have not been adversely affected. Generally those mergers involved carriers that were not significant direct competitors. The purpose of those mergers has often been to consolidate the carriers' complementary operations so as to be able to offer opportunities for increased efficiency and service. In other mergers involving competitors, the well-established "failing firm" doctrine allowed the approval of an otherwise anticompetitive merger. Thus, in the most recent past, we

have transmitted to DOT our recommendation to approve the merger of Delta Air Lines and Western Airlines, Texas Air and People Express, Alaska Airlines and Jet American Airlines, USAir and Pacific Southwest Airlines, American Airlines and Air Cal, and Southwest's acquisition of Muse and United's acquisition of Frontier (which was never consummated). DOT has approved them all.

Currently, DOT has before it an application for approval under section 408 of the proposed acquisition by USAir Group, Inc. of Piedmont Aviation, Inc. The Department of Transportation has ordered that a hearing be held to determine whether approval should be granted. The Department of Justice is studying the matter, but has not yet taken a position on the likely competitive effects of the transaction. In preliminary comments filed March 30, 1987, we noted several areas of potential concern, including overlaps between USAir and Piedmont in nonstop service, in connecting service, and on commuter services provided in conjunction with each of the airlines.

Another vestige of regulation that has gradually, but steadily, diminshed in use is the government's exercise of its authority under sections 412 and 414 of the Federal Aviation Act to immunize domestic intercarrier agreements from the antitrust laws. Such immunity was automatically conferred upon approved agreements before the enactment of the ADA, but was used sparingly by the CAB after 1978. Authority to approve domestic intercarrier agreements and grant them antitrust immunity was transferred to DOT upon sunset of the CAB.

The Department of Transportation has exercised its authority to immunize domestic intercarrier agreements only once—in connection with the ongoing discussions about scheduling delays at congested airports. DOT proposed schedule committee meetings, chaired by DOT and immune from the antitrust laws, among all airlines serving thirteen airports, ultimately convening five meetings, to attempt to reach agreements among the airlines as to when they would schedule their flights. As you may know, we had suggested to DOT that such scheduling agreements among competing airlines were inadvisable because they were unlikely to be successful in solving delay problems and could seriously risk harming consumers. We favored market-oriented solutions, such as charging carriers for peak-time landing rights. In any event, as DOT has wisely recognized in its general practice of not granting antitrust immunity for domestic intercarrier agreements, this is a mature, almost fully deregulated industry that can—and should—operate by the same competitive rules as any other unregulated industry.

That is the past and the present—what about the future? There are many encouraging signs in the industry. There has been a recent trend among carriers, both though mergers and internal expansion, to have more than one hub. Among the major carries that now operate hubs in more than one city are United at Chicago (O'Hare), Denver and Dulles; Delta at Atlanta, Cincinnati, and Dallas/Ft. Worth; USAir at Pittsburgh and Philadelphia; Piedmont at Dayton, Baltimore, Charlotte and Syracuse; American at Dallas/Fort Worth, Chicago (O'Hare), Nashville and Raleigh-Durham; Northwest at Minneapolis-St. Paul, Detroit and Memphis; Continental at Denver, Houston, Dulles and Newark; Eastern at Atlanta, Philadelphia and Kansas City. Expansion has enabled the current carriers to augment and strengthen their networks to offer passengers in affected markets pricing and service alternatives they did not previously have. It is likely, for example, that these developments will increase competition on some nonstop routes as individual carriers increase the number of flights from their hubs to other hubs. In addition, in virtually all areas of the country, there will also be increased competition among hubs for connecting flights.

The key to maintaining the many benefits so far obtained under deregulation is sound antittrust enforcement. As we at the Department of Justice look at each new airline consolidation, we are continuing to refine our knowledge and information about the ways that competition works in this vital and ever-changing industry. This will enable us to do a responsible job in the future in making recommendations to DOT and, ultimately, in the courts.

Under present law, DOT authority over mergers, interlocks, and domestic agreements, including its ability to immunize such transactions from the antitrust laws, is scheduled to terminate on January 1, 1989. After that time, such transactions will be subject to the normal operation of the antitrust laws in the federal courts. Court review of such transactions could come sooner if Congress passes legislation that would speed sunset of DOT's merger and interlock review authority and its existing authority to approve and grant antitrust immunity to domestic intercarrier agreements.

We greatly appreciate, Mr. Chairman, your introduction of S. 724, which, among other things, would sunset DOT's merger and interlock authority upon enactment.

We heartily endorse the early sunset of this authority, and believe it should also be accomplished with certain conforming amendments to ensure that these transactions are fully subject to the antitrust laws. Since introduction of S. 724, the Department of Transportation and we have considered and endorsed early sunset of DOT's authority to approve and immunize from the antitrust laws domestic intercarrier agreements as well. We believe that there is no reason to maintain this relic of regulation in a competitive and dynamic industry that is now almost fully deregulated, and that reliance on market forces rather than regulation would benefit consumers. Thus, we urge sunset of DOT's merger and interlock authority as soon as such legislation can be enacted, and we urge that DOT's authority with respect to domestic intercarrier agreements be sunset on October 1, 1987. The Department of Transportation and the Administration also support such early sunset. We have developed language in this regard and we would be happy to work with the Subcommittee to accomplish these results.

In conclusion, the Department of Justice echoes Secretary of Transportation Dole's comments, when transmitting to Congress the initial DOT sunset proposal, that treating the airline industry uniquely with respect to mergers is no longer justified in light of the "maturity and adaptability of the highly competitive domestic airline industry." Secretary Dole went on to say, "Experience has demonstrated that the procedures of the Clayton Act are far better suited to the needs of a competitive industry than the prior approval requirements contained in the Federal Aviation Act."[6] We agree. In short, it is time to treat the airline industry as we treat other U.S. industries; any difference are not significant for the purpose of merger analysis or for application of the antitrust laws generally.

We greatly appreciate the Subcommittee's consideration of these views.

Statement of People Express Pilots

This statement is filed on behalf of the People Express Pilot Merger Committee, the designated representative of more than 800 of the approximately one thousand People Express pilots for purposes of seniority integration issues. The People Express pilots support the Subcommittee's interest in the problems facing the aviation industry today. We believe that any comprehensive review of airline legislation must include solutions to the serious problems facing airline employees as a direct result of the multitude of mergers which have dramatically reshaped this industry.

During your hearing on April 23, 1987, several witnesses and distinguished members of the Subcommittee spoke of the Department of Transporation's (DOT) steadfast refusal to impose Labor Protective Provisions (LPPs) as a condition of airline merger approval, contrary to its legislative mandate and a thirty-year history of routine LPP imposition by the Civil Aeronautics Board. This undisguised disregard for employee welfare as part of the "public interest" that the agency was directed to promote, requires Congressional action so that airline employees can receive the kind of labor protection that Congress expressly required under the Aviation Deregulation Act of 1978. 49 U.S.C. § 1302(a)(3).[1]

THE PEOPLE EXPRESS PILOTS' SITUATION

The People Express pilots have an immediate need for legislation providing a fair and equitable process for merging of seniority lists, including the right to final and binding arbitration, the kind of LLP advocated by the AFL–CIO.

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[6] Letters dated March 10, 1987, addressed to the President of the Senate and the Speaker of the House of Representives transmitting a bill "To amend the Federal Aviation Act of 1958 to advance the scheduled termination date of the Essential Air Service Program, and for other purposes."

[1] Congress' express recognition of the benefits of and need for labor protective provisions in terms of the public interest was repeated in 1984 when it enacted the Civil Aeronautics Board Sunset Act, by which the DOT was granted authority over the remaining functions of the Civil Aeronautics Board. The House Committee on Public Works and Transportation confirmed in unequivocal terms that the standard *Allegheny-Mohawk* labor protective provisions should remain a functioning part of the DOT's regulatory arsenal.

In administering Section 408 of the Act the CAB has imposed labor protective provisions, known as the Allegheny-Mohawk conditions, as a condition to its approval of many mergers and other Section 408 transactions. These conditions have been imposed in all recent mergers of carriers operating large (more than 60 seats) aircarft. *The Committee expects that DOT will continue to impose labor protective conditions and to consider the interests of industry employees when evaluating the public interest under Section 102(a)(3).* H.R. Rep. No. 98–793, 98th Cong., 2d Sess. 11 (1984).

On October 24, 1986, DOT approved the acquisition of People Express Airlines by Texas Air Corporation without imposing LLPs. Throughout the merger negotiation and approval process, Texas Air Corporation, the parent company of Continental Airlines, and the management of People Express Airlines agreed between themselves and represented to the affected employees and the Department of Transportation that the pilot seniority lists would be merged fairly and equitably and, if necessary, resolved by a neutral third party arbitrator. Because the People Express pilots believed that a fair seniority list merger process had been voluntarily agreed to by all parties, they refrained from requesting LLP provisions from DOT.

On March 12, 1987, the managements of Continental and People Express Airlines informed the representatives of People Express pilots that no arbitration of seniority integration issues would be permitted and unilaterally imposed a management-prepared merged seniority list. The airlines' refusal to honor their agreement to provide a fair process for seniority integration leaves the People Express employees without seniority merger protection on the eve of the operational merger of the airlines. This situation is a dramatic example of a need for uniformly imposed labor protection.

The management-imposed list is unfair to the People Express pilots becasue it is not reflective of the relative status (captain, first officer, etc.) or length of service characteristics of the two pilot groups but, rather, *arbitrarily* places the first 295 People Express captains not only below *all* Continental captains but also below many Continental first officers yet to be trained as captains. The remaining approximately 150 People Express captains are integrated into the list beneath Continental first officers and flight engineers, who have never flown or been trained as captains. People Express copilots and flight engineers are positioned in a group at the very bottom of the Continental list. It is expected that the companies will be operationally merged in the next few months and the use of the imposed seniority list will have a permanent detrimental effect on the carrier opportunities, salaries and quality of life of the People Express pilots.

The imposition of standard LLPs by DOT could have prevented this situation by requiring the fair and equitable integration of seniority lists with final and binding arbitration.

The significance of LLPs to the pilot group cannot be overemphasized. The first and most important single factor in a pilot's working life is seniority. (This is also true for flight attendants and flight engineers in the aviation industry.) Seniority is at the core of the quality of life and welfare of an airline employee.

Seniority is the sole governing factor controlling one's working schedule in the airline industry. In addition to determining what equipment and position pilots fly, relative seniority controls whether they fly during the week or on weekends, have holidays off or fly over holidays, go to exotic glamorous destinations or are relegated to operating "puddle-jumpers," have more or less time off, and have advance knowledge of their schedules or operate on a standby basis.

Moreover, seniority determines where they are based-which affects where they live—and whether there will be a job for them during "bad" times when employees are furloughed. Of course, seniority determines an employee's salary, advancement opportunities, furloughs and order of recall. Failure to use a fair seniority merger process has an irreparably harmful effect on a pilot's career.

LPPS ARE IN THE PUBLIC INTEREST

It is clearly in the public interest for the government to legislate and regulate employee welfare in the aviation industry. The express terms of the Federal Aviation Act, as amended by the Airline Deregulation Act of 1978, interpret the public interest to include employee welfare. Prior to deregulation, DOT's predecessor, the Civil Aeronautics Board, considered employee welfare to be an aspect of the public interest and, for more than 30 years, routinely imposed LPPs as a condition of approval of airline acquisitions on the theory that the benefits to the stockholders of the carriers involved in the transaction should not come at the expense of the carrier's employees. The Board's determination that the imposition of LPPs was in the public interest was firmly based on an understanding of the practical difficulties posed by airline mergers, acquisitions, and similar transactions. The resolution of potential labor problems posed by airline mergers and acquisitions was recognized by the CAB to be critical to employees and carriers alike. Unresolved, they engender instability, discontent, lower morale, and lower productivity.

Congress specifically understood that deregulation would impose penalties on companies which were managed inefficiently or which misjudged the market. As Senator Adams stated in introducing S. 943 on April 7, 1987, the deregulation bill

"contained provisions designed to assure that airline employees would not be asked to carry a disproportionate share of the burden of deregulation. That was only fair. . . . [Congress] did not believe that the employees . . . ought to be required to pay too great a price for mistakes made by management." Congressional Record-Senate, S 4752, April 7, 1987.

Senator Adams' statement during your Hearing that LPPs were "part of the original bargain" of deregulation underscores the unfairness of this Administration's current practice. Reliance on an administrative agency such as DOT is misplaced, and experience has shown that it will not work. LPP legislation that will *require* the fair integration of seniority lists is urgently needed.

LPPS WOULD BENEFIT THE AIRLINE INDUSTRY

Imposed LPPs would not be economically burdensome to the airlines. The airlines opposing LPPs have greatly exaggerated the costs and burdens. The LPP of most interest to the People Express employee provides that integration of seniority lists should be accomplished by agreement between the carriers and employees, or if this cannot be accomplished, by binding arbitration. This provision only establishes fair and objective procedures for the integration of seniority lists and should not be burdensome to the airlines. The costs should be no more than the airlines' share of the arbitration expenses.

There is no evidence that the LPPs routinely imposed by the CAB ever resulted in any substantial cost to the airlines. In addition, full LPPs have been offered by various acquiring carriers, includng the recent Delta-Western and USAir-PSA mergers, thus belying the argument that LPPs are prohibitively expensive. The costs of LPPs are minuscule compared to the costs associated with labor unrest, and lost morale and productivity when employees are mistreated during a merger.

When LPPs are routinely imposed as they were under the CAB, they provide a workable means of softening the impact of business transactions on airline employees and promote stability in the workforce. The reliable and stable process for integrating seniority lists provided by LPPs promotes trust between the parties and encourages the discussion of difficult issues on an accelerated basis. The provision for binding arbitration provides an incentive for the parties to settle the dispute voluntarily.

On the other hand, the absence of LPPs can contribute to lower productivity and lower morale which is particularly significant in a safety-based industry. The present Congressional interest in a comprehensive review of airline legislation recognizes that employee welfare is inextricably bound with issues of consumer protection and safety. The stress of turmoil in the airline industry is being felt throughout the workforce. A stable and secure workforce is necessary if the airlines are to return to a satisfactory level of service to the public. This was the topic of your hearing. We hope that you will expeditiously address these extremely serious issues, and we trust that your efforts will result in effective LPP legislation protecting airline employees and providing an arbitration for the integration of the seniority of People Express and Continental pilots.

STATEMENT OF PILOTS OF AIRCAL

The approximately 450 pilots of AirCal welcome this opportunity to file a statement supporting the urgent need for labor protective provision legislation in the 100th Congress. During the past two years more than 20 airlines, employing 20,000 pilots and 200,000 other workers, have been parties to a series of mergers and acquisitions as a result of deregulation of the airline industry. This merger mania will affect virtually every employee in the industry before it finally runs its course. The employees involved have been or expect to be confronted with job losses, dislocations, and career uncertainties associated with the necessary combination of seniority lists for two companies into a single list. Labor protective provisions (LPPs) would protect employees against the adverse consequences of mergers by providing for the fair and equitable integration of the lists with a resort to final and binding arbitration by a neutral third party.

The process of fairly and equitably integrating seniority lists is not costly to an airline, but it is vitally important to the affected employees. A requirement to fairly and equitably integrate seniority lists, including access to arbitration if necessary, should be a mandatory part of any merger, acquisition or similar transaction.

In the airline industry, nearly every employee benefit is tied to your seniority number. It largely determines the quality of your life. If you are a pilot, it dictates

which aircraft you fly and the crew position you occupy. Those two items directly determine not only your current compensation but retirement income as well.

Years ago Woody Guthrie wrote, "As through this would you wander, you'll meet lots of different men; some will rob you with a six gun, some with a fountain pen." When you are robbed at the point of a gun, you lose your money -and you can make it up by earning more. But when you are robbed of your seniority, you lose not only your money, but the ability to recoup your loss.

The recent acquisition of AirCal by American Airlines, approved by the Department of Transportation (DOT) on March 30, 1987, *without the imposition of LPPs*, is a clear illustration of the present and immediate need for legislation reversing the blatant disregard by the Departments of Labor and Transportation for the interests and welfare of airline employees and restoring "the balance which [Congress] though . . . had already [been] established between management freedom and employee rights." (Statement of Congressman Mineta, Cong. Rec. H. 6926, Sept. 16, 1986.)

Each merger or acquisition presents a unique situation in terms of employee rights. The relative sizes of the workforces merged, the dates of hire and the experience levels of the pilot groups, their earnings history and expectations, and their relative status within their own workforce are all contributing factors which may be appropriate to consider in a determination of a "fair and equitable" merging of seniority lists. In the AirCal-American merger situation there are many issues which do not lend themselves to easy resolution because of some of these variables. Without the imposition of LPPs providing for a resort to arbitration in the event the parties cannot agree on a fair and equitable merging of lists, these outstanding issues could well be resolved in a manner resulting in severe and permanent harm to the AirCal pilots.

COLLECTIVE BARGAINING NOT A SUBSTITUTE FOR LPPS

The assertions by DOT and the Air Transport Association that collective bargaining is a satisfactory substitute for LPPs is unconscionable sophistry, as illustrated by the AirCal-American situation. While seniority may be fairly integrated if the employee groups of both carriers are represented by the same union *and* that union has an equitable merger policy in effect, employees whose representation rights will be assumed by a new union as a result of an acquisition have no protection except for that new union's "duty of fair representation." The "duty of fair representation" is a very broad and ill-defined concept which provides no assurance that seniority lists will be fairly integrated. In contrast, ample precedent exists to guide such integrations conducted under LPPs where both parties have access to the services of an arbitrator.

The acquisition of AirCal by American is truly an example of a whale swallowing a minnow. American has more than 50,000 employees, including over 6,100 pilots represented by the Allied Pilots Association. AirCal has 3,000 employees, of whom 450 are pilots represented by ALPA. To use Senator Ford's expression, AirCal does not amount to a "bump on an elephant's butt."

After the operational merger, the representation of the AirCal pilots will be assumed by the Allied Pilots Association. Although the Allied Pilots Association has indicated, in comments filed with the DOT on December 22, 1986, its recognition of an "obligation to fully and fairly represent all of the pilots of American Airlines without distinction or discrimination," the practical application of "fair and equitable" by the Allied Pilots Association could differ substantially from the interpretation of "fair and equitable" sought by the AirCal pilots to protect their rights in this merger.

In the final analysis a fair resolution of competing seniority rights of two groups cannot be guaranteed by the Allied Pilots Association's intention to assure an equitable result, as these are complex questions over which honest men may reasonably disagree. Effective LPPs would provide for an independent, unbiased third party to arbitrate unsettled issues.

LPP LEGISLATION NEEDED TO EFFECTUATE CONGRESSIONAL INTENT OF DEREGULATION

LPP legislation is needed to right a wrong which has existed since the inception of airline deregulation and one which has been particularly onerous since the sunset of the CAB. As a result of airline mergers and acquisitions, affected employees have suddenly been confronted with specters of job losses, dislocations and the uncertainties associated with combining seniority lists. Yet the Department of Labor and the Department of Transportation, in direct defiance of existing statutes and explicit Congressional directive, have chosen this very time of unprecedented

industry turmoil and potential employee hardship to abandon a long-standing program designed to cushion the impact of airline business transactions on employees: they have, in effect, abolished labor protective provisions, or LPPs.

During the decades that LPPs were routinely imposed by the CAB, they provided a workable means of softening the impact of business transactions on airline employees and promoted stability on the affected carriers. In addition, their costs appeared to be slight as carriers adjusted their business strategies to avoid significant employee disruption.

LPPs appear to be particularly successful in the area of seniority list integration. In every case where pilots produced an integrated list pursuant to their own procedures, the surviving carrier accepted that list.

Even though Eastern Airlines Chairman Frank Borman characterized the Airline Deregulation Act as "the greatest piece of anit-labor legislation of this century," adequate protection of airline employees was a critical part of airline deregulation. Congress recognized that deregulation would penalize poorly managed companies; and to ensure that airline employees did not bear too great a portion of the penalties or burdens of deregulation, the 1978 Airline Deregulation Act included labor protective provisions. The act further required the Secretary of Labor to adopt regulations implementing these LPPs within 6 months after the bill was enacted. This deadline passed more than 7 years ago. The Department of Labor has never adopted regulations to implement the financial benefits of LPPs. Regulations on the right-of-first-hire were not adopted until 1983, and, until recently, these regulations have been tied up in litigation. The result has been that airline employees have never received the protections which were an essential part of the deregulation package.

The clear Congressional intention for DOT to continue to impose LPPs in merger cases has been thwarted. For example, in a remarkable display of convoluted logic, DOT found, in the Midway-Air Florida and Southwest-Muse acquisition cases, that LPPs were designed "to protect the public's access to an air transportation system [and] not as an employee welfare measure." The standard adopted by DOT was that LPPs would be imposed only where the failure to do so would lead to "disruption of the nation's air transportation system as a whole." In applying this standard in the United-Pan Am Pacific Division transfer case, DOT concluded that "while strikes against Pan American and/or United would undoubtedly cause some passenger inconvenience, it is not at all clear that such strike[s] would threaten the air transportation system, despite the size of each carrier and the amount of service each provides." Thus, in reality, the standard DOT is using is designed to ensure that LPPs are never imposed.

The issue we are dealing with here is a simple one: fairness. It has gone unaddressed for far too long. Effective LPP legislation is urgently needed to provide for arbitration of seniority list integration disputes for all mergers, acquisitions, and transactions where seniority list integration has not yet been fully accomplished.

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